

PREHEARING CONFERENCE
BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:)	
)	
Application for Certification)	Docket No.
for the Pio Pico Energy Center)	11-AFC-01
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CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, JULY 9, 2012

9:00 a.m.

Reported by:
John Cota
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Carla Peterman, Presiding Member

Karen Douglas, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Raoul Renaud, Hearing Officer

Jim Bartridge, Advisor to Commissioner Peterman

Galen Lemei, Advisor to Commissioner Douglas

Eileen Allen, Commissioners' Technical Adviser for Facility Siting

CEC STAFF PRESENT

Kevin Bell, Staff Counsel

Eric Solorio, Project Manager

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

John A. McKinsey
Melissa A. Foster
Kimberly Hellwig
Stoel Rives, LLP

David Jenkins
Mike King
Pio Pico Energy Center, LLC

Maggie Fitzgerald
Gary Rubenstein
Sierra Research

INTERVENORS

Erik Schraner
Seltzer Caplan McMahon Vitek
Corrections Corporation of America (CCA)

Robert Simpson (via WebEx)

Gretel Smith (via WebEx)
Attorney for Robert Simpson

ALSO PRESENT

Bill Powers (via WebEx)

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E X H I B I T SSTAFFNumbersMarked for ID

201-203

6

APPLICANTNumbersMarked for ID

1-129

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INTERVENOR SIMPSONNumbersMarked for ID

300-302

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303

26

INTERVENOR CCANumbersMarked for ID

No Exhibits Marked

P R O C E E D I N G S

9:09 a.m.

PRESIDING MEMBER PETERMAN: We are ready to begin.

This is Commissioner Peterman. We are here for the prehearing conference for the Pio Pico Energy Center.

First let me introduce the Committee. I am the Presiding Member, Commissioner Carla Peterman. To my right I have my advisor, Jim Bartridge. Commissioner Karen Douglas is the Associate Commissioner on this case. She is two to my left and her advisor, Galen Lemei, is to her left.

We have our Hearing Officer Renaud in the middle and to the far right we have Eileen Allen, sitting advisor to the Commission.

Also let me introduce the Public Adviser, Jennifer Jennings, who is in the back of the room. If anyone from the public wants some information on this case they can reach out to her. And now let's turn to applicant and staff for their introductions. Applicant?

MS. FOSTER: Hi, I'm Melissa Foster with Stoel Rives, counsel for applicant Pio Pico Energy Center, LLC.

MR. JENKINS: David Jenkins, Principal with Apex Power Group, developer of Pio Pico Energy Center.

MR. BELL: Good morning, Kevin Bell, senior staff counsel, representing staff. With me here today is Eric Solorio, project manager.

1 PRESIDING MEMBER PETERMAN: Now we have -- for
2 intervenors is Rob Simpson in the room or on the line?

3 MR. SIMPSON: Hello, Rob Simpson is on the line.
4 And I expect my attorney, Gretel Smith, to be on the line
5 also.

6 PRESIDING MEMBER PETERMAN: Thank you; welcome.

7 MS. SMITH: Gretel Smith is here on -- Gretel
8 Smith is on the line, counsel for Robert Simpson.

9 MR. POWERS: Bill Powers is also on the line.

10 PRESIDING MEMBER PETERMAN: Great. And do we have
11 the Corrections Corporation of America in the room or on the
12 line? You want to come to the microphone, sir, and just
13 identify yourself.

14 HEARING OFFICER RENAUD: Take a seat here at the
15 table as a party.

16 MR. SCHRANER: Good morning, Erik Schraner with
17 Seltzer Caplan McMahon Vitek, representing Corrections
18 Corporation of America.

19 PRESIDING MEMBER PETERMAN: Thank you. Do we have
20 any elected officials in the room or on the line who wish to
21 identify themselves?

22 (No response.)

23 Any government agencies in the room or on the line
24 that would like to identify themselves?

25 (No response.)

1 With that let me turn the proceeding over to
2 Hearing Officer Renaud.

3 HEARING OFFICER RENAUD: Thank you very much,
4 Commissioner Peterman. Today's prehearing conference was
5 noticed in the Notice of Prehearing Conference and
6 Evidentiary Hearing that was issued on June 15th, 2012.

7 And I think before we get into the substance of it
8 I will announce that Corrections Corporation of America
9 filed a Petition to Intervene last week and the Committee
10 has considered that -- the Presiding Member has considered
11 that and has granted the Petition to Intervene for the
12 limited purpose of addressing the concerns over the noise
13 topic. And parties who are present in the room have been
14 handed a copy of the Order. It will be issued in the normal
15 course today as well on the website and mailed out and
16 emailed out and so on. So we have counsel for Corrections
17 Corporation of America here today representing that
18 intervenor.

19 Mr. Simpson, I understand you now have a new
20 attorney, Gretel Smith. Ms. Smith, is that correct?

21 MS. SMITH: That is correct.

22 HEARING OFFICER RENAUD: All right. Will you be
23 filing anything to indicate that you are Mr. Simpson's
24 attorney? Well I shouldn't ask you, I should tell you. We
25 will need you to file something indicating your

1 representation, please, so that we can make sure you get on
2 the Proof of Service.

3 MS. SMITH: Okay.

4 HEARING OFFICER RENAUD: All right? Thank you.

5 MS. SMITH: I can do that.

6 HEARING OFFICER RENAUD: Good. Okay.

7 We have several things we want to accomplish today
8 at the prehearing conference. We want to assess the
9 parties' readiness for hearings. And when I say "parties" I
10 mean the applicant, the staff and the intervenors, those are
11 the formal parties in this matter.

12 We want to clarify areas of agreement or dispute,
13 identify witnesses and exhibits, determine which areas
14 parties wish to cross-examine the other parties' witnesses
15 and discuss other procedural matters.

16 And all of that is aimed at insuring that we can
17 conduct the evidentiary hearing on July 23rd in as efficient
18 a manner as possible. We, as you all know, have limited
19 resources and we want to make sure we aren't wasting a lot
20 of time. We want to know in advance what to expect, how
21 much time it's going to take and plan accordingly.

22 We required, therefore, that every party submit a
23 prehearing conference statement and we did receive those in
24 a time fashion and we thank you for those. They are very
25 helpful in helping the Committee organize for the

1 evidentiary hearing.

2 Before we proceed further let me also explain a
3 little bit about our telephone WebEx system. Those of you
4 who are using it, I presume you can hear me and you can hear
5 what's going on in the room because I am not hearing anybody
6 objecting that they can't. We can hear you as well; so at
7 your end of the line if you would please keep the noise to a
8 minimum I'd appreciate it. If there is unavoidable noise
9 please use your mute button on your phone so that we can't
10 hear you but you can still hear us.

11 The proceeding is also being stenographically
12 recorded today by a certified court reporter and it will be
13 made into a transcript which will be made available to the
14 public via our website. All right.

15 The Final Staff Assessment was published by staff
16 in this matter on May 22nd, 2012 and this serves as staff's
17 testimony on all topics. And by "testimony" what I mean is
18 the sworn statement of witnesses.

19 When we go to the evidentiary hearing our job is
20 to create a formal evidentiary record upon which the
21 decision of the Committee can be based. And to do that we
22 proceed in a rather formal manner, almost like we were in
23 court. We have witnesses, the witnesses are sworn in. They
24 can testify either orally or in writing, they can be cross-
25 examined by the other parties and we also admit documentary

1 evidence. That is evidence in the form of tangible
2 materials.

3 The FSA, the Final Staff Assessment, has been
4 marked as Exhibit 200 and a very brief supplement to the FSA
5 has been marked as Exhibit 201. In addition on staff's
6 evidentiary list the San Diego Air Pollution Control
7 District Preliminary Determination of Compliance or PDOC has
8 been marked as Exhibit 202 and the Final Determination of
9 Compliance is 203.

10 (Staff's Exhibits 200 through 203 were
11 marked for identification.)

12 The air district documents are required by law to
13 be made part of the evidentiary record in these proceedings
14 and in addition we are required by law to have a
15 representative of the air district at the evidentiary
16 hearing to sponsor those documents. And staff and counsel,
17 we would ask that you please make those arrangements. The
18 witness can be present either in person or by phone. We
19 will be in Chula Vista for the evidentiary hearing so if the
20 witness can come in person that's probably just technically
21 easier for everybody but a phone appearance is acceptable as
22 well.

23 The Notice of Prehearing Conference and
24 Evidentiary Hearing established a schedule for the filing of
25 evidence and testimony by the parties. Opening testimony

1 was filed by the applicant on June 26th and they filed their
2 rebuttal testimony on July 6th. All of that has been marked
3 for identification as Exhibits 1 through 129.

4 (Applicant's Exhibits 1 through 129 were
5 marked for identification.)

6 And by marking for identification what I mean is
7 that for our reference purposes, that is so that we can
8 discuss things by number, we have marked them with numbers.

9 They haven't yet been admitted into evidence. Part of the
10 work of the evidentiary hearing is to determine whether or
11 not the exhibits will be admitted into evidence and made
12 part of the formal record. So at these point these items
13 are marked for identification but they are not yet formal
14 exhibits to the record.

15 Corrections Corporation of America filed its
16 Petition to Intervene on June 28th. Although it was after
17 the deadline for intervening, Corrections Corporation of
18 America through its counsel made a showing of good cause for
19 the late filing and on that basis, as I announced earlier,
20 their petition has been granted for the purpose of
21 addressing the noise issue.

22 Corrections Corporation of America, and I'll them
23 CCA from now on, filed testimony and a prehearing conference
24 statement with its exhibit list on July 6, that's last
25 Friday. There was quite a flurry of material that came in

1 on Friday and it's been a busy weekend getting used to those
2 things.

3 Bill Powers filed a Petition to Intervene on July
4 5th, that was 11 days after the deadline. Mr. Powers
5 subsequently sent an email in which he attempted to show
6 good cause for the late filing. However, the Presiding
7 Member reviewed those materials and found that Mr. Powers
8 was showing good cause why he should be or thought he could
9 contribute information but did not show good cause for being
10 late and on that basis that Petition to Intervene has been
11 denied. That was sent out last week. I understand that Mr.
12 Simpson intends to call Mr. Powers as a witness.

13 When you come to the evidentiary hearing if you
14 would all please bring a disc containing your evidentiary
15 materials that would be very helpful as well.

16 All right, so let's turn to a discussion of the
17 prehearing conference statements.

18 Okay, we have reviewed your prehearing conference
19 statements. Three of the parties, staff, applicant and CCA,
20 indicate that there is a disagreement with respect to the
21 topic of noise. Noise is one of the topics that the
22 applicant is required to address and the staff of the Energy
23 Commission also addresses in its analysis.

24 The controversy appears to boil down over which
25 regulation or ordinance applies to the Pio Pico Energy

1 Center. That is, what is the permissible noise level under
2 the, under the applicable law. And it appears there is a
3 disagreement over which law applies.

4 I will just point out that that's the sort of
5 thing that may be appropriate as a topic for briefing.
6 We'll get to briefing later in today's proceeding. But
7 something that is pretty much a legal question like that is
8 often a very good topic for briefing by the parties. And
9 shortly I'll ask those three parties to give us a brief
10 rundown of your respective positions on that noise issue.

11 Mr. Simpson in his prehearing conference statement
12 states that none of the issues are ready for evidentiary
13 hearing. The evidence submitted by Mr. Simpson pertains,
14 however, to air quality. He submitted the materials with
15 respect to his filings at the air district in his opening
16 testimony and his rebuttal testimony is from Bill Powers and
17 pertains to alternatives. At this point I don't see how Mr.
18 Simpson will be able to present evidence on other topics
19 other than through cross-examination but we'll get to that
20 shortly.

21 Let's first deal with this noise question. I
22 don't particularly care which party starts. Perhaps
23 Corrections Corporation of America should start because I
24 think it was you really who first raised the question. So
25 why don't you give us a brief summary.

1 MR. SCHRANER: I'd be happy too. (Inaudible).

2 HEARING OFFICER RENAUD: Turn on your microphone,
3 please. The green light should be on.

4 MR. SCHRANER: Can you hear me now?

5 HEARING OFFICER RENAUD: Yes.

6 MR. SCHRANER: Ah.

7 HEARING OFFICER RENAUD: The green light is on.

8 MR. SCHRANER: I'll get the hang of this yet.

9 I would break this down as being two main issues.
10 The first is, what is the legal standard, the legal noise
11 standard? And that comes down to what the county LORS
12 standards are. And then the second issue is, what will the
13 impact be on the noise generated by this project on CCA's
14 facility that will be built across the street from the
15 generating plant?

16 So we would certainly support on the legal issue
17 going ahead and submitting briefs before the hearing. We
18 think that would be helpful for the Commissioners to review
19 before the hearing, that way you have a better overview of
20 what the legal standards are.

21 And our position is on the legal standards that
22 the San Diego County LORS standard is that there are three
23 different noise standards. The first is specified in the
24 general plan noise element, the second one is specified in
25 the county code, which is similar to most cities' municipal

1 codes, and then the third standard is specified in the
2 specific plan which incorporates the zoning ordinance noise
3 standards for the San Diego County area.

4 And then, of course, we are going to be having
5 over 2100 people in our facility held at any one time. So,
6 of course, we are concerned about the noise that might be
7 generated by the power plant and the impact that might be on
8 the people being held within the facility. And, of course,
9 we are mostly concerned about exterior areas because people
10 are going to need to be able to go outside in order to go
11 ahead for recreation purposes.

12 And then also, of course, we are similarly
13 concerned about their ability to be able to sleep at night
14 and the impacts the energy plant might have on their ability
15 to sleep within the facility. And again, there will be over
16 2100 persons held at the facility so we believe that there
17 could be significant concerns about the noise that might be
18 generated by the energy plant.

19 HEARING OFFICER RENAUD: A couple of questions for
20 you. Are you finished?

21 MR. SCHRANER: Yes.

22 HEARING OFFICER RENAUD: How far is your client's
23 project from the proposed site?

24 MR. SCHRANER: It's across the street and I am not
25 familiar with how wide the street is. Our expert witness

1 Jeff Fuller, though, is fully familiar with, you know, the
2 distance and how that might affect the noise that might be
3 generated by the energy plant facility.

4 HEARING OFFICER RENAUD: As I understand it
5 there's a special noise ordinance for that area, for the
6 East Otay Mesa or for the Otay Mesa area, the industrial
7 area. Does that allow for a higher noise level?

8 MR. SCHRANER: Well, I wouldn't phrase it as that
9 there is a special ordinance. The East Otay Mesa Specific
10 Plan specifies that there's a -- you refer to the county
11 zoning ordinance for a noise standard. But the specific
12 plan also requires that all developments and uses comply
13 also with the general plan and with the county code noise
14 ordinance provisions.

15 And in fact there's also provisions in the
16 specific plan waiving height restrictions on walls in order
17 to comply with the general plan and with the county code
18 noise ordinance. So I wouldn't say that there is a special
19 provision within the specific plan that specifies what the
20 noise standard is because there's at least three noise
21 standards within the county that apply within the specific
22 plan area.

23 HEARING OFFICER RENAUD: All right, thank you.
24 And then, staff, it appears to me from the testimony that's
25 contained in the FSA that staff's position is pretty much in

1 line with CCA's, correct about that?

2 MR. BELL: I would say that it's --

3 HEARING OFFICER RENAUD: Or was at that time.

4 MR. BELL: I would say that it's very similar to
5 CCA's position, I wouldn't say that it meshes 100 percent.
6 But this is one of the topic areas where staff is prepared
7 to have live testimony if that is going to be helpful and
8 relevant. And we have also discussed having somebody
9 available from the city to answer questions as well on their
10 own ordinances. The county, I'm sorry, from the county to
11 answer questions.

12 HEARING OFFICER RENAUD: All right. Maybe I
13 misread your statement but from reading your statement it
14 sounded to me as though the staff was willing, still willing
15 to listen. Your position is not entrenched, you could be
16 persuaded otherwise based upon consultation with the county
17 and that sort of thing; am I correct on that?

18 MR. BELL: Our position is almost never
19 entrenched.

20 HEARING OFFICER RENAUD: All right, good.

21 MR. BELL: We are always willing to listen.

22 HEARING OFFICER RENAUD: And you have requested,
23 in fact, that the parties be ordered into a workshop on July
24 23rd to address this issue and that you expect to have
25 county staff available to participate at that time; is that

1 correct?

2 MR. BELL: That is correct, that is correct. I
3 found it, in my experience, that workshops, last-minute
4 workshops before evidentiary hearing can prove to be
5 fruitful. They have in the past in other projects that I've
6 worked on. And if this, if this one, true issue in dispute
7 remains in dispute just prior to the hearing there is always
8 a chance we can work something out without having to go to
9 hearing, without having to present evidence.

10 HEARING OFFICER RENAUD: Okay, thank you. And
11 turning to applicant. Before you address us I have a
12 question for you. And that is, I've read your filings. The
13 one thing I didn't see anywhere in your filings is whether
14 or not, in fact, the project could meet the lower noise
15 standard that is set forth in the FSA? Is it feasible?

16 MS. FOSTER: Which, which specific standard are
17 you referring to? In the FSA in Condition Noise-4 --

18 HEARING OFFICER RENAUD: Noise-4.

19 MS. FOSTER: -- there's two separate noise limits.

20 HEARING OFFICER RENAUD: Yes.

21 MS. FOSTER: One relates to sensitive receptors at
22 LT-1 and LT-2 and the other relates to noise impacts on the
23 EMDF.

24 HEARING OFFICER RENAUD: With respect to both of
25 those I think is the question I'm asking. Is there a

1 feasibility issue?

2 MS. FOSTER: I think that the issue for applicant
3 relates to the restrictions that are being put on the
4 applicant's project as they relate to an adjacent use of the
5 proposed EMDF facility as well as the more-stringent-than-
6 LORS requirements that are being set at the sensitive
7 receptors at LT-1 and LT-2. So applicant actually has two
8 different issues with Condition of Certification Noise-4.

9 And as far as -- Dave can speak better to the
10 issue about, about noise limits. I think at this point it's
11 an issue of applicant believes that Condition of
12 Certification Noise-4 places limits on the Pio Pico Energy
13 Center that are not consistent with LORS and conditions our
14 project upon another project. At another project's boundary
15 and that sort of thing.

16 HEARING OFFICER RENAUD: All right. And
17 Mr. Jenkins, is there -- do you have some information,
18 possibly? I know that's kind of a surprise question.

19 MR. JENKINS: Not presently but I would concur
20 with counsel's statement that we think the condition as
21 written in the FSA goes above and beyond what we believe
22 would be required by LORS.

23 HEARING OFFICER RENAUD: Okay. Well, think I can
24 tell you that -- go ahead, yes. Please state your name.

25 MR. MCKINSEY: This is John McKinsey from Stoel

1 Rives as well. I wanted to add one thing to what they
2 indicated that gets a little of your question. Besides the
3 issue with the number that's in Noise-4, the way the limit
4 is described it simply says "at the EMDF facility." And
5 that is as problematic as the number is.

6 Part of the issue with answering that question is
7 it is not really clear where you would measure that number
8 at. So if you want a definitive answer, is there a problem,
9 part of the issue arises with where are we measuring that
10 number at. And the condition -- and so our comments went as
11 much as to the number as to the fact that the facility
12 doesn't exist yet and so that seems to suggest there is
13 going to be some magical location in the future where it
14 would be measured at.

15 We have had one discussion with CCA already and
16 we're hopeful that we're going to be able to work out a
17 resolution to this that provides a precise point of
18 monitoring, and preferably on the project where it's
19 something that the project owner can measure it very
20 definitively at, that CCA would be comfortable with that
21 would allow the facility to have a certainty and answer
22 that question. Because that is really what the problem is
23 is that there's a lot of uncertainty about whether or not it
24 can meet it and, you know, you can't build a project with
25 that.

1 HEARING OFFICER RENAUD: Thank you for that.
2 Anything else from applicant?

3 MS. FOSTER: No.

4 HEARING OFFICER RENAUD: No. Back to CCA. How
5 far along is your client's project? Is it under
6 construction yet?

7 MR. SCHRANER: It is not under construction at
8 this time but it is already an approved project by the
9 county of San Diego. So the only thing left to do is to
10 pull building permits and begin construction.

11 HEARING OFFICER RENAUD: And is there a date set
12 for that?

13 MR. SCHRANER: I'm not aware of -- my
14 understanding is they are thinking about starting
15 construction within the next year. They're thinking it's
16 probably going to take about a year to get the building
17 permits for all the county of San Diego.

18 MS. FOSTER: Can I ask a question?

19 HEARING OFFICER RENAUD: Yes, please.

20 MS. FOSTER: Isn't the project going through a
21 building design change and it's going before the planning
22 commission again this month for a revision to the proposed
23 layout? I mean, to the approved layout. So there's
24 currently a proposed revision to the project.

25 MR. SCHRANER: Yes, there is a proposed revision

1 currently being processed by the county of San Diego. But
2 we do have an approved major use permit for the facility and
3 we could proceed with construction under that major use
4 permit.

5 HEARING OFFICER RENAUD: Okay, thank you. Let me
6 turn to Intervenor Simpson and his counsel. Since you have
7 indicated that nothing is ready for hearing do you wish to
8 weigh in on the noise issue? Ms. Smith, Mr. Simpson?

9 MS. SMITH: I'd have to -- Mr. Simpson, do you
10 want to --

11 MR. SIMPSON: Sure.

12 MS. SMITH: Do you have anything to say about
13 this?

14 MR. SIMPSON: Sure. We don't think that the noise
15 issue is settled. Are we -- are we presenting evidence at
16 this juncture or what would you like to, what would you like
17 to know?

18 HEARING OFFICER RENAUD: No, we are not presenting
19 evidence, that's reserved for the evidentiary hearing. All
20 we are doing is finding out the parties' positions on
21 disputed areas and what evidence they intend to introduce.
22 You have not provided any evidence in your filings with
23 respect to noise. Would you intend to cross-examine
24 witnesses in the area of noise?

25 MR. SIMPSON: Well, the other project that they're

1 discussing -- well yes, is the short answer, we would like
2 to cross-examine. But the other project that they are
3 describing wasn't in the, in the analysis so we weren't
4 aware about another project. So I think that's something
5 that should be analyzed, what the noise effect will be on
6 that project.

7 HEARING OFFICER RENAUD: All right, good, thank
8 you. All right. Well, I think the Committee is hoping the
9 parties can, through a workshop, resolve this.
10 Ms. Peterman.

11 PRESIDING MEMBER PETERMAN: You have a question
12 from Ms. Allen.

13 HEARING OFFICER RENAUD: I'm sorry, Ms. Allen has
14 a question. This is Eileen Allen.

15 ADVISOR ALLEN: This is a question for CCA. Can
16 you tell us the name of the project that is going through
17 the local review process now?

18 MR. SCHRANER: It's still the East Otay Mesa
19 Detention Facility.

20 ADVISOR ALLEN: So it is commonly referred to as
21 EMDF, East Mesa Detention Facility?

22 MR. SCHRANER: On occasion, yes.

23 ADVISOR ALLEN: Okay. I need some clarification
24 regarding the proposed facility that is in review now versus
25 the existing facilities. Is there an existing facility

1 that's part of what I've thought of as a correctional
2 facilities complex to the north of the Pio Pico site and is
3 one of them currently called East Mesa Detention Facility?

4 MR. SCHRANER: Well our facility hasn't been built
5 yet. It has been approved, there was a major use permit
6 that's been issued by the county of San Diego. CCA is
7 currently processing an application with the county for an
8 amendment to the major use permit to make some changes to
9 the facility. And that is currently being processed by the
10 county and will be heard this month before the planning
11 commission.

12 ADVISOR ALLEN: Well here is the source of my
13 confusion. When you go on the county's website and you look
14 at the list of their existing correctional facilities there
15 is one listed as East Mesa Detention Facility and it appears
16 to be existing. There is another one called East Mesa
17 Juvenile Detention Facility. Okay, those are on the ground,
18 operating. And then there's CCA's facility --

19 MR. SCHRANER: Yes.

20 ADVISOR ALLEN: -- with a similar name.

21 MR. SCHRANER: It's a busy area, yes.

22 ADVISOR ALLEN: Yeah.

23 MR. SCHRANER: They do have similar names and I
24 don't believe that, you know -- CCA hasn't come up with a
25 final name of what they're going to end up calling their

1 facility.

2 ADVISOR ALLEN: Okay. Is there any geographic or
3 operating connection between the two?

4 MR. SCHRANER: Not at this time, no.

5 ADVISOR ALLEN: Okay. Thank you.

6 MR. SCHRANER: You're welcome.

7 HEARING OFFICER RENAUD: All right, thank you. So
8 the parties are to conduct a workshop in advance of the
9 evidentiary hearing and attempt to work this out. I like
10 your idea of doing it on the morning of July 23rd, partly
11 because you'll be down there and should be able to involve
12 county representatives at that time. And so what we'll do
13 is we'll plan to convene the evidentiary hearing as
14 scheduled and hear from you at that time about the results
15 of your workshop. So any notice or whatever that needs to
16 be taken care of for that workshop, staff, please take care
17 of that if you will, thank you.

18 All right, let's now turn to the exhibit lists.
19 Each of you did submit an exhibit list in the format we
20 requested except Mr. Simpson. I'll forgive that since your
21 exhibit list is two exhibits long so I think we can deal
22 with it.

23 Does anybody have at this time any changes or
24 additions to their exhibit list that they can inform the
25 Committee about?

1 MS. FOSTER: None.

2 HEARING OFFICER RENAUD: None from applicant.

3 From staff?

4 MR. BELL: None.

5 HEARING OFFICER RENAUD: All right.

6 MR. BELL: I would just comment that we'll
7 probably update our exhibit list because it appears that
8 there seems to be some overlap with our exhibit list and the
9 applicant's exhibit list.

10 HEARING OFFICER RENAUD: All right, we'd
11 appreciate that, thank you.

12 And, Simpson, I have from you Exhibit 300, which
13 is your opening testimony and attachments, the opening
14 testimony consisting of your filings with the air district.

15 And 301, Robert Sarvey, testimony. You didn't number Bill
16 Powers' testimony but you did submit that so should we call
17 that 302, Mr. Simpson, or Ms. Smith?

18 MR. SIMPSON: Yes, please.

19 HEARING OFFICER RENAUD: Okay.

20 MR. SIMPSON: Yes.

21 (Intervenor's Exhibits 300 through 302 were
22 marked for identification.)

23 HEARING OFFICER RENAUD: All right.

24 MR. POWERS: This is Bill Powers.

25 HEARING OFFICER RENAUD: Yes.

1 MR. POWERS: There is one other exhibit that I'd
2 like to add as well, which is a June 2012 presentation by
3 AES Storage on battery storage.

4 HEARING OFFICER RENAUD: What format is that
5 presentation in?

6 MR. POWERS: PowerPoint. It's PDFed but it's
7 originally a PowerPoint.

8 HEARING OFFICER RENAUD: Have you submitted that
9 yet?

10 MR. POWERS: No, but I could submit it any time.

11 HEARING OFFICER RENAUD: Well, again, as a witness
12 for Mr. Simpson I'm going to have to speak with Mr. Simpson
13 and his counsel about this. The final date for filing
14 evidentiary materials was July 6th. Is there good cause for
15 submitting this exhibit after the deadline?

16 MR. SIMPSON: This is new information that we
17 just --

18 MR. POWERS: Uh.

19 MR. SIMPSON: I'm sorry, go ahead, Bill.

20 MR. POWERS: No, you can go ahead, Rob.

21 MR. SIMPSON: This is new information that just
22 came out that's relevant to Mr. Powers' testimony and this
23 proceeding. So we can get it in there. We can get it in
24 there today.

25 HEARING OFFICER RENAUD: How long is it?

1 MR. POWERS: It's about 25 pages.

2 HEARING OFFICER RENAUD: All right. Does
3 applicant object if we allow the late filing of this exhibit
4 from Mr. Powers?

5 MS. FOSTER: Can Mr. Powers or Mr. Simpson
6 identify the topic area to which this new evidence goes to?

7 HEARING OFFICER RENAUD: Mr. Powers, can you --

8 MR. POWERS: It's battery storage.

9 HEARING OFFICER RENAUD: Apparently it's about
10 battery storage.

11 MS. FOSTER: Applicant opposes the inclusion of
12 this late-filed evidence.

13 HEARING OFFICER RENAUD: Okay. Staff?

14 MR. BELL: As does staff. The indication was that
15 this was new evidence that has just come out. I can't
16 recall the date that Mr. Powers said that the evidence was
17 available but it sounds like it's been around for awhile.
18 If this has been known to the witness, this being proposed
19 by Mr. Simpson, it's late and there is no good cause.

20 HEARING OFFICER RENAUD: All right. And CCA, any
21 response?

22 MR. SCHRANER: We have no objection to it.

23 HEARING OFFICER RENAUD: CCA has no objection, all
24 right. Not having seen --

25 MR. POWERS: May I explain?

1 HEARING OFFICER RENAUD: Please.

2 MR. POWERS: This presentation is dated June 2012.
3 I received it from a colleague on Saturday.

4 HEARING OFFICER RENAUD: All right. What the
5 Committee would like you to do, Mr. Simpson, is get that in.
6 We'll mark it for identification. Once everybody has seen
7 it we'll be able to address it's admission or admissibility
8 at the evidentiary hearing. It's pretty hard for us to deal
9 with something we haven't seen. But at the time of the
10 evidentiary hearing we'll address first the issue of its
11 being filed late as well as other evidentiary issues
12 pertaining to that item. And that needs to get in today by
13 electronic means, please. Is that doable?

14 MR. SIMPSON: Yes.

15 HEARING OFFICER RENAUD: All right, thank you.

16 MS. SMITH: Yes.

17 HEARING OFFICER RENAUD: All right. That will be
18 marked 303 for identification. Oh, I'm sorry, Powers'
19 testimony is 303 and we'll mark the battery storage item for
20 identification as 304. Okay? All right.

21 MR. SIMPSON: Okay.

22 HEARING OFFICER RENAUD: Thank you. Yes,
23 Mr. McKinsey?

24 MR. MCKINSEY: I think you identified 302 as
25 Powers' testimony and then that would make 303 the battery.

1 HEARING OFFICER RENAUD: I'm sorry, you're right.

2 Okay, so let me just sort this out. Okay.

3 So we have 300 is Rob Simpson's opening testimony
4 and attachments, which was the air district materials, 301
5 is Mr. Sarvey's testimony, 302 is Mr. Powers' testimony and
6 303 is the new battery item that is coming in today.

7 (Intervenor's Exhibit 303 was marked
8 for identification.)

9 All right. With respect to the other parties
10 exhibit lists. Applicant, do you have any objections to any
11 of the materials on those exhibit lists?

12 MS. FOSTER: No, we do not.

13 HEARING OFFICER RENAUD: All right, staff, do you?

14 MS. FOSTER: Not at this time.

15 MR. BELL: Not at this time.

16 HEARING OFFICER RENAUD: All right. CCA?

17 MR. SCHRANER: We have no objections at this time.

18 HEARING OFFICER RENAUD: All right, thank you.
19 Simpson, any objection to the other parties' exhibit lists?

20 MR. SIMPSON: I'm sorry, I was -- hi, this is Rob
21 Simpson. I was just disconnected so I didn't hear anything
22 after we started identifying the exhibits.

23 HEARING OFFICER RENAUD: You have an attorney on
24 the line as well.

25 MS. SMITH: Right.

1 HEARING OFFICER RENAUD: And I am not clear as to
2 whom we should be addressing here. Right now what I am
3 looking for is objections to the other parties' exhibit
4 lists, Mr. Simpson or your counsel, Ms. Smith.

5 MR. SIMPSON: We don't have objections.

6 HEARING OFFICER RENAUD: All right, thank you.

7 MR. SIMPSON: But I would like to know what
8 happened with the Bill Powers exhibit.

9 HEARING OFFICER RENAUD: Okay. It was marked for
10 identification as Exhibit 303. Since we haven't seen it we
11 can't really make any decisions about it. But at the
12 evidentiary hearing the Committee will rule on whether it
13 will be admitted, taking into account the factor of its
14 lateness as well as the other evidentiary factors.

15 MR. SIMPSON: Thank you. And as my attorney gets
16 more up to speed, I kind of just threw her into the deep in
17 here, I'm sure she'll participate more. But I hope you have
18 a lot of patience while I have a little more time on this
19 project.

20 HEARING OFFICER RENAUD: We are and I understand
21 that, been in that position myself. Most attorneys are
22 pretty good at getting up to speed quickly so I wish you the
23 best, Ms. Smith. All right.

24 MS. SMITH: Thank you.

25 HEARING OFFICER RENAUD: Okay. Okay. Now the

1 parties have also submitted lists of witnesses they intend
2 to call and those have been exchanged among you. Does
3 applicant have an objection to any of the witnesses proposed
4 by the other parties?

5 MS. FOSTER: Applicant has no objection to the
6 witnesses identified, however, we would like to discuss the
7 time allowed for direct and cross of those witnesses.

8 HEARING OFFICER RENAUD: All right. We will get
9 to the time issue once we go through the parties with
10 respect to the witnesses themselves.

11 Staff, any objection to any of the witnesses
12 proposed by the other parties?

13 MR. BELL: None at this time.

14 HEARING OFFICER RENAUD: All right. CCA?

15 MR. SCHRANER: CCA has no objections.

16 HEARING OFFICER RENAUD: All right. Simpson,
17 objection to the witnesses?

18 MR. SIMPSON: No objections.

19 HEARING OFFICER RENAUD: All right, thank you.

20 Now with respect to the amount of time for
21 witnesses. Staff -- I'm sorry, applicant, you've indicated
22 an objection and what is that objection, please?

23 MS. FOSTER: We are specifically referencing the
24 time mentioned by Mr. Simpson in his filing. I believe it
25 was related to air quality but I am not sure if it was

1 related to all topics. I think he indicated at least eight
2 hours of time.

3 HEARING OFFICER RENAUD: All right, let's address
4 that. Mr. Simpson and your attorney, Ms. Smith, in the
5 second and third pages of your prehearing conference
6 statement you have indicated that cross-examination of air
7 quality witnesses could take eight hours and all other areas
8 should take less than an hour each. If we did eight hours
9 on air quality and let's say three-quarters of an hour on
10 each other area we would be looking at well in excess of 20
11 hours. That simply isn't going to work.

12 Let me ask first, Mr. Simpson, do you have
13 witnesses you are planning to call as direct witnesses? And
14 perhaps your attorney can answer that better than you
15 because that's a legal term. In your initial filing there
16 were no direct witnesses indicated so I would assume from
17 that that you have none and your witnesses are all being
18 called for rebuttal. Would I be correct about that?

19 MR. SIMPSON: Well, we would like to call
20 Mr. Sarvey and Mr. Powers.

21 HEARING OFFICER RENAUD: Yes. And you provided
22 the identification of those two witnesses in your prehearing
23 conference statement for the first time so I take it you are
24 offering them as rebuttal witnesses so as to contradict or
25 rebut testimony provided by the other parties.

1 MR. SIMPSON: That should be fine.

2 HEARING OFFICER RENAUD: All right.

3 MS. SMITH: Yes.

4 HEARING OFFICER RENAUD: And how much time do you
5 think we'll take --

6 MR. POWERS: Could I interject for just one
7 second?

8 HEARING OFFICER RENAUD: Is this Mr. Simpson?

9 MR. POWERS: No, this is Mr. Powers. Could I ask
10 a question?

11 HEARING OFFICER RENAUD: Okay.

12 MR. POWERS: My testimony is in alternatives and I
13 just want to make sure that if the applicant or if the staff
14 do not address the alternatives or they do it in a very
15 cursory manner during their direct testimony that I will
16 have the opportunity to thoroughly rebut this whatever
17 testimony, even if it's new, on alternatives.

18 HEARING OFFICER RENAUD: Okay. Well first of all,
19 Mr. Powers, it may be more efficient for you to speak to us
20 directly but I just want to remind you and everyone else
21 that you are not a party, you are a witness, but I am
22 assuming what you are saying to us is what Mr. Simpson or
23 his attorney would say to us if you could tell them to say
24 it. So with that I am just going to respond to you
25 directly.

1 Understand that the testimony of the parties is
2 largely in writing. The AFC and the other exhibits filed by
3 the applicant as well as the FSA and the other exhibits
4 filed by the staff are hundreds and hundreds of pages of
5 testimony. Included in there is testimony about
6 alternatives. So if you intend to provide rebuttal
7 testimony regarding alternatives what you would be rebutting
8 is in those documents.

9 MR. POWERS: Okay.

10 HEARING OFFICER RENAUD: Just because we don't
11 have the witness standing here or sitting here raising their
12 right hand and testifying doesn't mean that they haven't
13 testified, they will be testifying in writing. All right?
14 So that would be what you would be rebutting.

15 MR. POWERS: That's fine.

16 HEARING OFFICER RENAUD: All right. Just so you
17 understand that, okay. All right.

18 Now as far as the -- let's go back then to
19 Mr. Simpson and his attorney. How much time do you estimate
20 you will need for Mr. Sarvey's testimony, if any? You may
21 not plan to call him as a witness, you have submitted
22 written testimony. Do you plan to call him as a live
23 witness?

24 MR. SIMPSON: Yes, we'd like to call him as a live
25 rebuttal witness. I wouldn't expect it -- I think we

1 indicated how long. Thirty minutes is what --

2 MS. SMITH: Yes.

3 HEARING OFFICER RENAUD: All right.

4 MR. SIMPSON: -- I believe our statement said.

5 HEARING OFFICER RENAUD: All right. And
6 Mr. Powers, how much time would you need for your testimony
7 by Mr. Powers? And I'm talking about speaking.

8 MR. SIMPSON: Mr. Powers, what's your thought?

9 HEARING OFFICER RENAUD: There's a lot of written
10 material that's being submitted but I'm talking about how
11 much live oral testimony.

12 MR. POWERS: Hey, Rob? I think an hour is fine.
13 An hour is fine for me.

14 MR. SIMPSON: An hour should be fine for him.

15 HEARING OFFICER RENAUD: Okay. Now, Mr. Simpson
16 and your attorney, under air quality you've indicated cross-
17 examination of those witnesses could take eight hours. I
18 can tell you right now that eight hours of cross-examination
19 doesn't sound like a reasonable amount of cross-examination.
20 We simply don't have that kind of time.

21 I am not going to at this time tell you you can
22 have 15 minutes, but what I am going to tell you is that if
23 you are cross-examining a witness that means that you have
24 prepared questions, you have reviewed their testimony, you
25 know what they are saying and you have questions regarding

1 what their testimony said. The testimony, as I previously
2 explained, is largely in writing so you will need to be
3 familiar with that and have questions to ask regarding that
4 testimony.

5 As long as your questioning appears to be well-
6 prepared and is providing useful information to the
7 Committee we will permit it to continue. But once it starts
8 to look like you are on what we sometimes call a "fishing
9 expedition" we will have to cut it off in the interest of
10 time. Does that sound fair?

11 MR. SIMPSON: Well, I hope you understand my
12 dilemma is that I didn't receive response to my comments on
13 the PDOC so I'm a step behind on this. What I should be --
14 what we should be -- if we're at evidentiary hearing I
15 should be looking at their responses to -- to my comments on
16 the PDOC and my questions should lead from that point. But
17 now I'm a step behind.

18 HEARING OFFICER RENAUD: I understand that.

19 MR. SIMPSON: So I don't have their response to go
20 from.

21 HEARING OFFICER RENAUD: You don't have, you don't
22 have air district personnel's responses to your questions on
23 their document, right?

24 MR. SIMPSON: That's correct. And I did make a
25 public records request for a response to my comments. My

1 expected response to comments from what normally would
2 happen and what happened in Carlsbad.

3 HEARING OFFICER RENAUD: All right.

4 MR. SIMPSON: But they chose not to respond to my
5 comments.

6 HEARING OFFICER RENAUD: All right. Just to
7 explain this in very simple terms, we are not the air
8 district, we are the Energy Commission. It sounds like you
9 have an issue with the issue with the air district with
10 respect to their responding to your comments and that's
11 where you would need to pursue that kind of a question.

12 However, the air district documents do become part
13 of our evidentiary record here at the Energy Commission.
14 And as I said, the air district is required by law to have a
15 witness available regarding those documents. So during the
16 evidentiary hearing, in fact, you would have an opportunity
17 to question that witness.

18 So again, if that is your intent I would recommend
19 that you have your questions prepared. And when the air
20 district witness becomes available be prepared to ask them
21 your questions. Does that sound okay?

22 MR. SIMPSON: Does the Energy Commission
23 adjudicate the air district's determination?

24 HEARING OFFICER RENAUD: No. It becomes part of
25 our evidentiary record but the Energy Commission's analysis

1 is an independent analysis. We, in fact, would be legally
2 free to disagree with the air district. I can't say that
3 that happens very much, if ever, but we are not required to
4 simply accept the district's determinations.

5 MR. SIMPSON: Well the problem is with the
6 conclusive nature of the Warren-Alquist Act that I don't
7 have recourse to elicit a response from the air district
8 with the Energy Commission in the way.

9 HEARING OFFICER RENAUD: Okay. You know --

10 MR. SIMPSON: I can't appeal to the --

11 HEARING OFFICER RENAUD: At this point I think you
12 are kind of looking for legal advice and you have an
13 attorney and that's really where you ought to be looking for
14 legal advice. I can't tell you how to proceed with the air
15 district. In fact, if you asked me I would have to tell you
16 I don't know because I haven't studied that. But you should
17 consult with your counsel concerning what legal steps you
18 have available to address the air district.

19 I think I've explained pretty clearly the role of
20 the air district's documents here at the Energy Commission,
21 and as I said, you will have an opportunity to question
22 their witness at the evidentiary hearing. And that will
23 become part of the record.

24 MR. SIMPSON: Well, I'm not -- I'm not necessarily
25 asking for legal advice. What I'm trying to understand is

1 the Commission's authority when it comes to adjudicating the
2 FDOC or the PDOC and where my recourse would be if I can't
3 get a response to my comments. So maybe that last portion
4 is a legal question but it's the Commission's authority that
5 I'm trying to understand.

6 HEARING OFFICER RENAUD: You know, I think I've
7 said about all I'm going to say about that. We don't have
8 jurisdiction over the air district. The extent of our
9 involvement with the air district is to include their
10 documents in our decisions but we don't have any authority
11 over the air district. If you have a problem with the air
12 district you need to go to the air district. Again, consult
13 with your attorney who can research the law about the air
14 district and find out what recourse you may have there.

15 MR. SIMPSON: And is it the Energy Commission's
16 intent to issue an air pollution permit? Is that what a
17 license is?

18 HEARING OFFICER RENAUD: The license is an
19 authority to construct and operate the power plant and among
20 the environmental issues reviewed and analyzed is air
21 quality.

22 MR. SIMPSON: And does the Commission need to give
23 notice that it will be issuing an air pollution permit?

24 HEARING OFFICER RENAUD: Well it is not called an
25 air pollution permit, it's an authority to construct and

1 operate the power plant.

2 MR. SIMPSON: Oh, authority to construct.

3 HEARING OFFICER RENAUD: Yes, we do give notice of
4 that.

5 MR. SIMPSON: So you do need to give notice -- so
6 you do need to give notice that you will issue an authority
7 to construct?

8 HEARING OFFICER RENAUD: Yes and that's been,
9 that's ongoing and it's part of this whole proceeding.

10 MR. SIMPSON: Well I understand there are notices
11 ongoing but I don't see anything that says that a proposed
12 authority to construct will be --

13 HEARING OFFICER RENAUD: No, it hasn't been
14 granted yet. When --

15 MR. SIMPSON: -- issued.

16 HEARING OFFICER RENAUD: It hasn't been granted or
17 denied. When the Commission issues its decision that's when
18 there is notice of availability of that decision and then an
19 appeal period begins to run at the Energy Commission.
20 Before the Commission issues its decision the Committee
21 issues its Presiding Member's Proposed Decision and you also
22 have a 30 day review period on that. So those are the,
23 those are the relevant notice periods at the Energy
24 Commission.

25 MR. SIMPSON: Well, it's not so much the notice

1 period, it's what -- the content of the notice that I'm
2 looking for. Is it the notice that says --

3 HEARING OFFICER RENAUD: The notice simply says,
4 here is the decision and you have 30 days to appeal it.

5 MR. SIMPSON: Okay.

6 HEARING OFFICER RENAUD: The decision has not been
7 made yet, I think you know that. All right.

8 MR. MCKINSEY: Hearing Officer Renaud.

9 HEARING OFFICER RENAUD: Yes, Mr. McKinsey.

10 MR. MCKINSEY: I don't -- as an applicant we
11 object to the allocation of eight hours but particularly
12 because we are not planning on presenting any live air
13 quality testimony, we are relying entirely on our written
14 testimony. I think staff had the same position. And so at
15 this point there is only one possible witness for
16 Mr. Simpson to conduct some questioning with and that would
17 be the witness from the air district and I think at most 30
18 minutes would be an adequate amount of time. But applicant
19 would object to any time more than that.

20 HEARING OFFICER RENAUD: Well again, as I
21 indicated, I am not going to set precise time limits at this
22 point but eight hours doesn't sound reasonable. I think
23 I've indicated what we're looking for. We want the
24 questioning to be prepared and concise and to the point and
25 once it starts going off-track that's when we'll stop it.

1 MR. McKINSEY: Thank you.

2 HEARING OFFICER RENAUD: All right now,
3 Mr. Simpson and your attorney, again.

4 MR. SIMPSON: Yes.

5 HEARING OFFICER RENAUD: In your prehearing
6 conference statement one of the topics you were asked to
7 address is the identities of the witnesses, if any, that the
8 party desires to have testify via telephone. And you have
9 indicated in one word, you said "all." What do you mean by
10 that?

11 MR. SIMPSON: Well, there's only Mr. Sarvey,
12 Mr. Powers and myself so -- I don't know if Mr. Powers will
13 be available to participate in person but I don't believe
14 Mr. Sarvey will be.

15 HEARING OFFICER RENAUD: Okay, thank you. That's
16 helpful, I appreciate that. All right.

17 Now on cross-examination, again, you have -- you
18 were asked in your prehearing conference statement to set
19 forth the topic areas upon which a party desires to cross-
20 examine witnesses and provide a summary of the scope of such
21 cross-examination and the time desired for such cross-
22 examination. And you have said all topics and you did not
23 provide a summary of the scope of any of that cross-
24 examination. Are you requesting that the parties provide
25 all witnesses who provided written testimony in person or by

1 telephone so that you can speak to them and cross-examine
2 them?

3 MR. SIMPSON: Yes. And I wouldn't expect it to
4 take an hour if I can get straight responses to straight
5 questions. I may only have three or four questions for a
6 witness. But if they don't simply respond to my questions
7 then that's what seems to eat up a lot of time. I don't
8 have any desire to make the hearing last any longer than it
9 takes to get responses.

10 HEARING OFFICER RENAUD: Well you're going to need
11 to specify which witnesses, which topics and the scope of
12 testimony. And we wanted you to do that by Friday and you
13 didn't do it.

14 MR. SIMPSON: Hmm.

15 HEARING OFFICER RENAUD: And to now, less than two
16 weeks before the evidentiary hearing be asking the parties
17 to produce all of these people, which is many dozens of
18 people, and make them available in case you want to ask them
19 a question, is not a reasonable request.

20 The parties have indicated, the other parties have
21 indicated which witnesses they intend to call and you will
22 be permitted cross-examination of those witnesses. In
23 addition --

24 MR. POWERS: Hey, Rob? This is Bill Powers.

25 HEARING OFFICER RENAUD: Yes?

1 MR. POWERS: Well, I would suggest that the
2 alternatives, that I would say 30 minutes to an hour of
3 cross-examination of the CEC staff that prepared the FSA
4 alternatives section.

5 MR. SIMPSON: Thank you, that sounds reasonable.
6 Does that sound reasonable to --

7 HEARING OFFICER RENAUD: Would that be the sole
8 topic, that and then the district's air quality witness?

9 MR. SIMPSON: No, no. The witnesses they've
10 identified, I don't think they want to call any witnesses,
11 do they?

12 HEARING OFFICER RENAUD: No, I don't think so.

13 MR. SIMPSON: Well.

14 HEARING OFFICER RENAUD: The witnesses are
15 testifying in writing.

16 MR. SIMPSON: Then when you say --

17 HEARING OFFICER RENAUD: The witnesses are
18 testifying in writing.

19 MR. SIMPSON: Well, when you say I'll be allowed
20 to cross-examine the witnesses that they have identified,
21 they haven't identified any witnesses, then --

22 HEARING OFFICER RENAUD: They have identified them
23 and indicated they are testifying through written testimony.

24 You were to have made your request in your prehearing
25 conference statement for any witnesses you wish to cross-

1 examine. And I don't --

2 MR. SIMPSON: Well.

3 HEARING OFFICER RENAUD: I don't have any. I'm
4 looking at your statement and you didn't list anybody.
5 Staff, can you provide the alternatives witness, Wenjun
6 Qian? Or Mr. Solorio, I'm not sure which would be
7 preferable for you?

8 MR. BELL: We can, we certainly can.

9 HEARING OFFICER RENAUD: All right.

10 MR. BELL: We were planning, depending on how the
11 testimony -- what testimony, if any, was allowed by the
12 intervenors on the subject of alternatives. Staff, of
13 course, reserves the right to recall rebuttal witnesses for
14 that.

15 HEARING OFFICER RENAUD: Yes.

16 MR. BELL: So we would naturally have those
17 witnesses in that potentially contested area available for
18 at the very least rebuttal but if necessary we could have
19 them available for cross if cross-examination is going to be
20 permitted, despite the fact that it wasn't requested
21 specifically.

22 HEARING OFFICER RENAUD: Yes, all right. And I
23 think as long as I'm talking to --

24 MR. SIMPSON: I think --

25 HEARING OFFICER RENAUD: Hold on, hold on, let me

1 finish.

2 As long as I am talking to you, Mr. Bell. I know
3 the Committee is going to have some questions regarding the
4 traffic area.

5 MR. BELL: Yes.

6 HEARING OFFICER RENAUD: So kind of be alerted to
7 have those witnesses available. They needn't be there in
8 person, they could be on the phone.

9 MR. BELL: Yes, we have already made those
10 arrangements.

11 HEARING OFFICER RENAUD: All right, thanks.

12 Okay, I'm sorry, was that Mr. Simpson that started
13 to speak?

14 MR. SIMPSON: Yes, I'm sorry about that.

15 HEARING OFFICER RENAUD: Go ahead.

16 MR. SIMPSON: You're referring to Question 6 on
17 the prehearing conference order.

18 HEARING OFFICER RENAUD: Yes.

19 MR. SIMPSON: The topic areas upon which a party
20 desires to cross-examine witnesses.

21 HEARING OFFICER RENAUD: Yes.

22 MR. SIMPSON: Summary of the scope of the cross-
23 examine, the time desired for each cross-examination.

24 HEARING OFFICER RENAUD: Yes.

25 MR. SIMPSON: I didn't -- I didn't read that the

1 identity of the witnesses was required so I answered the
2 topics themselves and I did identify the areas of concern
3 with those topics.

4 MR. BELL: I'd refer back to Question 5, if that's
5 helpful, the identities of the witnesses.

6 HEARING OFFICER RENAUD: Yes. And you've
7 identified all your witnesses as Mr. Sarvey and Mr. Powers,
8 all right.

9 MR. SIMPSON: Well, Question 5 is the identity of
10 the witnesses that the party desires to have testify via
11 telephone.

12 HEARING OFFICER RENAUD: Yes.

13 MR. SIMPSON: I thought your question was -- I
14 thought your statement was that I didn't identify the
15 witnesses I wished to cross-examine. I'm not seeing a
16 question that says that I should identify the witnesses I
17 want to cross-examine, just the topic areas.

18 HEARING OFFICER RENAUD: You know, Mr. Simpson,
19 the questions that you're asked to address on the prehearing
20 conference statement are pretty clear. And one of the most
21 important ones is number six and that's where we are asking
22 each party to do the other parties the courtesy of letting
23 them know two weeks in advance which of their witnesses they
24 want to have available for cross-examination, okay.

25 MR. SIMPSON: But that's not what Question 6 says.

1 Question 6 says, topic areas upon which a party desires to
2 cross-examine witnesses. A summary of the scope of the
3 cross-examination and the time desired for each such cross-
4 examination.

5 HEARING OFFICER RENAUD: And you haven't
6 identified --

7 MR. SIMPSON: It doesn't say we have to identify
8 the actual --

9 HEARING OFFICER RENAUD: But you haven't given us
10 a summary of the scope so we have no idea what you want to
11 do.

12 MS. SMITH: If I may interject. If you actually
13 read his answer to number Six he does refer to the topics in
14 answer Two to summarize the scope of his, of the cross-
15 examination.

16 HEARING OFFICER RENAUD: Yes, all topics, right.
17 But we don't have anything about the scope.

18 MR. SIMPSON: Yeah, the last, the last sentence in
19 that, in that statement it says "all topics" and answer Two
20 summarizes the scope. So Question number 2 --

21 MS. SMITH: And if you -- right. It was the air
22 quality is the first issue and then there's a summary of the
23 scope, the biological resources and a summary of the scope
24 and it goes down the list.

25 HEARING OFFICER RENAUD: You know, by "scope" what

1 we mean is what do you want to ask them about. And cross-
2 examination means you're going to ask them questions about
3 what they said, okay. But we need to know which aspects of
4 what they said you want to ask questions about.

5 Mr. Simpson, I can't believe that, for example,
6 you intend to ask cross-examination questions of a witness
7 regarding facility design. That's one of the topics and you
8 said all topics. What would you want to ask someone about
9 facility design?

10 MR. SIMPSON: I identified the scope of what I'd
11 like to cross-examine in my response to Question number 2.
12 So my primary areas are air quality, biological resources,
13 alternatives, hazardous materials, noise and vibration,
14 public health, socioeconomics, soil and water resources,
15 visual resources. But you're correct, I don't need to ask
16 about what you just mentioned and I didn't indicate that I
17 did.

18 HEARING OFFICER RENAUD: All right. Mr. Bell.

19 MR. BELL: Thank you. Mr. Simpson has identified
20 numerous areas that he wishes to cross-examine on but he has
21 offered no testimony whatsoever that contradicts many of
22 these areas. He has offered Mr. Sarvey as an expert to
23 testify in certain areas and we have certain written
24 testimony from Mr. Sarvey that touches on air quality,
25 environmental justice and water resources, arguably. And we

1 have a statement from Mr. Bill Powers that if called, if
2 allowed to testify for Mr. Simpson would be testifying as to
3 one area, which is alternatives.

4 For the rest of these areas there is no -- it
5 doesn't appear that there is any evidence in contravention
6 of what the Committee already has in front of it in terms of
7 the FSA or in terms of what the applicant has provided or
8 even CCA.

9 To sort of get to the end of this conversation a
10 little bit more early, staff would suggest that Mr. Simpson
11 be limited to cross-examination of the witnesses in those
12 areas where he's provided at least some evidence for the
13 Committee to consider such as, arguably, air quality,
14 arguably, environmental justice, arguably, water resources
15 and, arguably, alternatives.

16 That the rest of these we have nothing from Mr.
17 Simpson. He has given us no evidence as to hazardous
18 materials for the Committee to consider. We have no
19 evidence before us with respect to noise and vibration from
20 Mr. Simpson for the Committee to consider. We have nothing
21 from Mr. Simpson about any of these other areas.

22 And some of what you could consider to be the
23 reason for his desire to cross-examine indicates a lack of
24 knowledge of what's in the FSA of some basic information.
25 So we would suggest that Mr. Simpson be limited in his

1 cross-examination only to those subjects that it appears
2 that he has some true dispute and not everything in the FSA.

3 HEARING OFFICER RENAUD: Would the applicant care
4 to address this concern?

5 MS. FOSTER: Applicant concurs with Mr. Bell and
6 would request that Mr. Simpson be limited in the time in
7 which he is allowed to cross-examine on those topic areas as
8 well.

9 HEARING OFFICER RENAUD: All right, thank you.

10 Okay, at this time the Committee has before it a
11 request from Mr. Simpson regarding cross-examination and
12 needs to deliberate regarding that so we will take a 15
13 minute recess and go into closed session concerning that.
14 When we come back we will respond, thank you.

15 (Off the record at 10:13 a.m.)

16 (On the record at 10:42 a.m.)

17 HEARING OFFICER RENAUD: Okay, it looks like
18 everyone is present. The Committee has returned. While we
19 were in deliberation we discussed Mr. Simpson's requests
20 regarding cross-examination of witnesses. And before we get
21 into the details it looks like, Ms. Smith, you are present?

22 MS. SMITH: I am present, yes.

23 HEARING OFFICER RENAUD: All right. Should we
24 wait for Mr. Simpson to call back or can we proceed?

25 MR. SIMPSON: I'm here.

1 HEARING OFFICER RENAUD: Oh, you're there, good.

2 MR. SIMPSON: I'm here.

3 HEARING OFFICER RENAUD: Okay, thank you. Well,
4 then we don't have a problem with that.

5 Okay, so Mr. Simpson, what the Committee did is go
6 through your topic areas under number Two quite carefully
7 because you referred to those as the scope of your cross-
8 examination and said that that summarizes the scope. And so
9 I'm just going to go through each of these with you and with
10 the parties and let you know how the Committee plans to
11 proceed here.

12 Starting on the first page of your prehearing
13 conference statement you've got a number of topics listed.
14 Under cultural resources you did not list, say anything. So
15 there is no scope there so there will be no cross-
16 examination on cultural resources.

17 Turning to soil -- to traffic and transportation.
18 Again, you have not stated any scope so there will be no
19 cross-examination.

20 Transmission line safety and nuisance; same thing,
21 no scope listed.

22 Waste management; no scope listed.

23 So with respect to those topics there will be no
24 cross-examination.

25 Going back to the beginning. With respect to air

1 quality, you have set forth a summary of your concerns
2 regarding air quality and so a limited amount of cross-
3 examination will be allowed and we request that each party
4 provide an air quality witness by telephone or in person to
5 be available for cross-examination by Mr. Simpson.

6 With respect to biological resources, Mr. Simpson,
7 you have made a statement that the true impacts cannot be
8 analyzed yet. It appears the project proponent commenced
9 grading without a license, which would have eliminated any
10 biological resources on the site.

11 Now that, that's just a statement about your view
12 of the issue but we can't tell from that what scope of
13 cross-examination you wish. Can you tell us what questions
14 you would want to ask regarding that topic?

15 MR. SIMPSON: I'll send you a draft of my
16 questions if that would help.

17 HEARING OFFICER RENAUD: No, no, I need to know
18 the scope. I don't need your questions, I just need to know
19 what you want to ask questions about. And saying
20 "biological resources" is not enough.

21 MR. SIMPSON: Oh, I'm sorry.

22 HEARING OFFICER RENAUD: I need to know what are
23 your concerns.

24 MR. SIMPSON: Oh, okay. Well, the deposition
25 impacts are -- the primary -- (connection interrupting) --

1 HEARING OFFICER RENAUD: Nitrogen deposition
2 impacts?

3 MR. SIMPSON: Yeah, all -- carbon di --

4 HEARING OFFICER RENAUD: I'm sorry, you're
5 breaking up here. I'm not sure what to do about that but
6 we're hearing like every other word.

7 MR. SIMPSON: Oh. I'll try to call back but it's
8 sketchy for me to get back in through the system too.

9 HEARING OFFICER RENAUD: That's way better. It's
10 fine now.

11 MR. SIMPSON: Okay. Yeah, the -- are the primary
12 and how the conclusions were --

13 HEARING OFFICER RENAUD: Mr. Simpson, I'm sorry,
14 I'm going to have to interrupt you again.

15 MR. SIMPSON: Can you --

16 HEARING OFFICER RENAUD: But we're getting every
17 other word again and we're trying to make a record of what
18 you're saying so we can have an accurate transcript. For a
19 few seconds there it was very good. Let's give it one more
20 try and then I think we're going to have to ask you to call
21 back.

22 MR. SIMPSON: Well, what if we -- what if you
23 propose a time period for that.

24 HEARING OFFICER RENAUD: Propose a time period for
25 what? I'm not sure I understood.

1 MR. SIMPSON: Biological -- examination.

2 HEARING OFFICER RENAUD: I barely heard any of
3 that statement. I'm not sure why it's breaking up.

4 MS. SMITH: I believe what he said is, he
5 requested to propose a short, a time period for the
6 biological resources.

7 HEARING OFFICER RENAUD: The concern we have is
8 not so much the time period, it's the -- it's the
9 inconvenience and expense of making a witness available for
10 you when nobody has any idea what kinds of things you want
11 to ask about or how long it will take. So we need know a
12 little more than just telling you you can have five minutes.
13 I mean, we need to know what it's about so that we can make
14 a determination about witnesses and that sort of thing.

15 You were asked to provide us the scope of your
16 cross-examination by 2:00 p.m. Friday, July 6th and you
17 didn't on this topic. And so now we are asking you, we're
18 giving you another shot at it but we need to know what the
19 questions, what kind of questions you want to ask. What do
20 you want to ask about?

21 MR. SIMPSON: Well, my questions are (audio
22 dropped) --
23 Did you hear that?

24 HEARING OFFICER RENAUD: No.

25 MR. SIMPSON: My questions relate to the air

1 quality impacts on biological resources.

2 HEARING OFFICER RENAUD: All right, so that will
3 be the area of your cross-examination with respect to
4 biological resources.

5 MR. SIMPSON: Yes, air quality impacts. Did you
6 hear that?

7 HEARING OFFICER RENAUD: Nitrogen deposition
8 impacts on biological resources. That's what I --

9 MR. SIMPSON: Air quality impacts. Not just
10 nitrogen.

11 ASSOCIATE MEMBER DOUGLAS: What other air quality
12 impacts do you think, do you want to ask about as
13 potentially affecting biological resources, Mr. Simpson?

14 MR. SIMPSON: Local -- (audio dropped) -- if
15 that's been considered. And the basis for the analysis
16 around -- what I see to be flawed air quality analysis.

17 ASSOCIATE MEMBER DOUGLAS: Mr. Simpson, are you on
18 a speaker phone? If you are then it would be --

19 MR. SIMPSON: No.

20 ASSOCIATE MEMBER DOUGLAS: You're not, okay. Well
21 we are still hearing, we are still not hearing every third
22 word and unfortunately it seems to be pretty critical words
23 that we're missing here. Could you either call back or
24 maybe your attorney could hear you and could repeat what you
25 said?

1 MR. SIMPSON: Sure, I can call back.

2 ASSOCIATE MEMBER DOUGLAS: Thank you.

3 HEARING OFFICER RENAUD: All right, we'll wait for
4 your call.

5 MR. SIMPSON: Testimony. And the cross-
6 examination would take. But you want me to call back?

7 HEARING OFFICER RENAUD: Yes, please.

8 MR. SIMPSON: Okay, I'll call back.

9 HEARING OFFICER RENAUD: Thank you.

10 (Pause.)

11 MR. SIMPSON: Hello.

12 HEARING OFFICER RENAUD: Mr. Simpson, that's you.
13 All right, let's try --

14 MR. SIMPSON: Hello, this is Rob Simpson.

15 HEARING OFFICER RENAUD: Hi. Well, let's try it
16 again.

17 MR. SIMPSON: Can you hear me any better now?

18 HEARING OFFICER RENAUD: We can hear you very
19 well, thank you.

20 MR. SIMPSON: Oh good.

21 HEARING OFFICER RENAUD: All right. So let's
22 summarize where we are, the scope of your cross-examination
23 on biological resources. You were saying air quality
24 impacts on biological resources and you were being asked
25 what --

1 MR. SIMPSON: Yes.

2 HEARING OFFICER RENAUD: What besides nitrogen
3 deposition would be an impact that you would want to ask
4 about?

5 MR. SIMPSON: Well, I believe that the impacts
6 that I'm -- I'd like to ask about also relate to the
7 comments that I made on the PDOC. So --

8 HEARING OFFICER RENAUD: That doesn't help us.
9 You need to be more specific.

10 MR. SIMPSON: (Audio breaking up). Yes, if I can
11 finish speaking I will be.

12 HEARING OFFICER RENAUD: Go ahead.

13 MR. SIMPSON: So what I'd like to cross-examine
14 about are issues that I already raised in the PDOC comments
15 and air quality impacts to biological resources, which
16 include nitrogen deposition, localized effects of greenhouse
17 gases and the extent of the biological survey.

18 ASSOCIATE MEMBER DOUGLAS: What was the last word,
19 the extent of the biological?

20 MR. SIMPSON: Survey.

21 ASSOCIATE MEMBER DOUGLAS: Survey. So the extent
22 of the biological survey, does that relate to air quality
23 impacts on biological resources or is that a different
24 topic?

25 MR. SIMPSON: I believe it would, I believe it

1 would.

2 ASSOCIATE MEMBER DOUGLAS: Can you just very, at a
3 very high level help us understand how it does?

4 MR. SIMPSON: Well, until the biological resources
5 are identified and when they're identified I believe it's
6 hard to take the next step and identify the impacts. So if
7 -- for instance, a biological survey of the site that had
8 just been graded isn't going to disclose much. So I'd like
9 to understand the delineation between the survey on the site
10 and what's off-site. But primarily it's the air quality
11 impacts on biological resources.

12 ASSOCIATE MEMBER DOUGLAS: Okay. All right,
13 Mr. Simpson, this is Commissioner Douglas. So what I
14 understand is that you might have some questions about the
15 survey of the site, the biological surveys. You're
16 interested in the impacts or potential impacts of nitrogen
17 deposition on biological resources and you're interested in
18 asking about the potential localized GHG impacts on
19 biological resources, is that correct?

20 MR. SIMPSON: Yes, ammonia impacts, nitrogen
21 impacts, those type of things.

22 ASSOCIATE MEMBER DOUGLAS: You added ammonia,
23 that's another one?

24 MR. SIMPSON: Air quality impacts.

25 ASSOCIATE MEMBER DOUGLAS: Okay.

1 MR. SIMPSON: So whether that's ammonia, GHG,
2 nitrogen. I'd like to understand what's, what's occurred to
3 study the non-point impacts of this facility.

4 HEARING OFFICER RENAUD: On biological resources.
5 Remember, that's what we're talking about.

6 MR. SIMPSON: Yes.

7 HEARING OFFICER RENAUD: All right, we'll allow
8 cross-examination with respect to the topic as you have
9 articulated the scope just now.

10 MR. MCKINSEY: Hearing Officer Renaud, I've got
11 one concern and that is that Mr. Simpson is identifying some
12 form of topics but he is not necessarily indicating that
13 there was a witness by a party that testified as to those
14 topics. There are two topics in there I think that there is
15 no testimony on but to be sure of that we would need to take
16 a look at the testimony in, say, the staff assessment or the
17 AFC and other documents. So he can't really create his
18 testimony by pulling a witness from CEC staff or the
19 applicant and then asking them questions that go beyond what
20 they talked about. He ought to be able to identify, this
21 witness raised this topic and I want to cross-examine that
22 witness on that topic that they raised.

23 HEARING OFFICER RENAUD: You make a good point.
24 That's the reason we ask for the scope, Mr. Simpson, is
25 because the parties need to know which witness of theirs

1 would be the best person to answer your cross-examination
2 questions. So we need to know what they want to ask them
3 about and we're hearing, you know, some very real
4 frustration here concerning not being able to tell from what
5 you're saying which witness is going to be helpful to you.

6 On the other hand the parties, I think, if you are
7 not hearing from Mr. Simpson an articulation of a scope that
8 seems to cover any of the testimony you have offered then I
9 wouldn't say you need to provide a witness. I do think the
10 FSA did discuss nitrogen deposition in this area and I know
11 it discussed the biological survey as well. Now it sounds
12 like something the staff, the FSA witness would be
13 appropriate. I hope that's helpful.

14 MR. MCKINSEY: A good example, I don't think that
15 there is any discussion by a witness in the record at this
16 time regarding localized greenhouse gas effects on biology.

17 And so that's an example of a topic that we would say there
18 is no witness that's testified so there is nobody for you to
19 cross-examine. I'm just concerned we'll have a list of 30
20 topics and trying to sort it out and then figure all that
21 out on the day of the evidentiary hearing may get a little
22 tangled, but.

23 HEARING OFFICER RENAUD: Mr. Simpson, do you
24 understand the concern that is being raised by Mr. McKinsey?

25 I think he has pointed out a very real concern. And again,

1 it's the reason we ask for a pretty specific description of
2 the scope of cross examination. Normally, if you cross --

3 MR. SIMPSON: Well, if the response --

4 HEARING OFFICER RENAUD: Mr. Simpson, hold on one
5 second. Let me give you an example. Normally if you are
6 going to cross-examine a witness you say, Witness Smith, on
7 page 62 of your testimony you said X. And then you say, did
8 you ever consider the opinion of Mr. Jones, which is Y?
9 Okay. In this case, you're going to need to be able to do
10 that. You're going to need to be able to point to someone's
11 testimony and say, here is what you said and I am going to
12 cross-examine you about what you just said. If you can't
13 point to a witness who said something that you want to
14 cross-examine about there is nothing, there is no one to
15 cross-examine. Okay.

16 And I think we are doing you a favor by not asking
17 you to specify people, we are just asking you to specify a
18 scope. If it comes down to there not being any testimony in
19 an area of scope you have identified then there won't be
20 anyone to cross-examine.

21 And maybe this is an appropriate time as long as
22 I'm ranting and raving to point out that, Mr. Simpson, you
23 have participated in something like ten of our proceedings
24 in the past and I think you know the rules and you know how
25 this works. You have been through this many, many times

1 before. And you have been asked repeatedly in the past to
2 be specific and to help the parties in getting us to a
3 productive and efficient evidentiary hearing and I am just
4 not seeing any improvement in that area.

5 The Committee is bending over backwards now trying
6 to help you articulate your scope and determine which topics
7 it would be productive for you to have cross-examination
8 about. And I am concerned because the biology, I am just
9 not hearing you say anything that would help identify a
10 scope other than nitrogen deposition. That's pretty
11 specific and I believe there is testimony on that and we can
12 address that. But the other things you're saying about the
13 PDOC and so on just are not specific enough.

14 PRESIDING MEMBER PETERMAN: Mr. Simpson, let me
15 add, this is Commissioner Peterman. I just want to echo
16 Mr. Renaud's comments. When we went into closed session we
17 really did look at all the areas in which you had an
18 interest, you have an interest in cross-examination. And
19 really we have to go about inferring the scope because the
20 scope isn't presented for many of them. And so we're taking
21 this time right now in the prehearing conference to go
22 through each one of these to try to refine the scope and see
23 if there is sufficient enough scope to allow cross
24 examination. But I believe this is information that should
25 have been more clearly presented by you in your prehearing

1 conference statement.

2 HEARING OFFICER RENAUD: All right. You know, I
3 think we have spent enough time with the --

4 MR. SIMPSON: Are you --

5 HEARING OFFICER RENAUD: -- biological resources.

6 Yes, Mr. Simpson.

7 MR. SIMPSON: I'm sorry. Can I respond?

8 HEARING OFFICER RENAUD: Yes, please.

9 MR. SIMPSON: Thank you. I appreciate it if you
10 feel that you're doing the favor of bending over backwards
11 but part of the problem here is that I don't have the
12 benefit of the response to my comments on the PDOC to move
13 forward from. So I don't have the nitrogen deposition
14 questions responded to from the air district so it's hard to
15 give specific answers here.

16 You know, I feel that already without this
17 response to my PDOC comments I'm prejudiced in this
18 proceeding because, as you said, you don't have the
19 underlying testimony because the air district didn't respond
20 to my comments. If the air district responded to my
21 comments about localized effects of greenhouse gases or
22 nitrogen deposition or any other of the air quality related
23 biological issues then I could make a more cognizant
24 representation of my issues. But until I get my answers
25 from the air district it's hard to identify what my

1 biological concerns are. So, you know --

2 HEARING OFFICER RENAUD: Well, nonetheless,
3 Mr. Simpson --

4 MR. SIMPSON: -- the extent that I'm --

5 HEARING OFFICER RENAUD: Go ahead.

6 MR. SIMPSON: Pardon?

7 HEARING OFFICER RENAUD: Go ahead.

8 MR. SIMPSON: So that's, that's my problem with,
9 you know. If the prehearing conference statement had told
10 me to identify the witnesses then I would have tried to do
11 that. But I tried to answer the questions on the prehearing
12 conference statement.

13 HEARING OFFICER RENAUD: Yes.

14 MR. SIMPSON: If the answer -- if the answer to a
15 question is that you haven't studied greenhouse gas effects,
16 localized greenhouse gas effects, that should be a pretty
17 short conversation.

18 HEARING OFFICER RENAUD: Who would you ask that
19 of?

20 MR. SIMPSON: The question would be, well, did you
21 study it? No, I didn't study it.

22 HEARING OFFICER RENAUD: All right, okay.

23 MR. SIMPSON: I don't expect that aspect of
24 questioning to take very long.

25 HEARING OFFICER RENAUD: First with respect to the

1 air district issues. First, there will be an air district
2 witness available, you can cross-examine that person at our
3 evidentiary hearing.

4 MR. SIMPSON: Okay.

5 HEARING OFFICER RENAUD: With respect to your
6 questions not being answered and so forth, that's, as I said
7 earlier, something you need to take up with the air district
8 and not us. So I think the biological resources, we have --
9 you have indicated an interest in cross-examination on
10 nitrogen deposition and possible other air quality impacts
11 on biological resources. So to the extent any party has
12 testimony regarding those biological resources issues, if
13 you could make a witness available that would be helpful.

14 Moving on to hazardous materials. You made a
15 statement: "The project should use a urea-based control
16 instead of ammonia." Again, that sounds like a statement of
17 your opinion but what is the scope of your cross-
18 examination? Would it be you simply want to ask someone why
19 isn't it using urea instead of ammonia?

20 MR. SIMPSON: Yep.

21 HEARING OFFICER RENAUD: All right. So if the
22 parties could have available a witness with respect to the
23 choice of ammonia instead of urea that would be helpful and
24 that will be the scope of that cross-examination.

25 Land use. You have stated: "The project should

1 be --"

2 MR. SIMPSON: Now --

3 HEARING OFFICER RENAUD: Yes?

4 MR. SIMPSON: Pardon me. The pipeline safety
5 issue. I'm not sure if I placed that appropriately.

6 HEARING OFFICER RENAUD: Well we'll get to it.
7 You placed it under worker safety and fire protection, we'll
8 get to it. Okay?

9 MR. SIMPSON: Okay. And do you feel that that's
10 the appropriate place for that question or should that be in
11 hazardous materials?

12 HEARING OFFICER RENAUD: Well, I am not sure but
13 it's under worker safety so that's where we'll talk about
14 it.

15 MR. SIMPSON: Well, okay, we could do it that way.

16 HEARING OFFICER RENAUD: Okay. I'm just going to
17 go by your document. And that's where it is so let's wait
18 until we get to that.

19 Now in land use you've stated: "The project should
20 require an override of local land use laws." Again, that
21 sounds like a statement of your opinion but that does not
22 tell us what you would -- what your scope of cross-
23 examination would be. Can you tell us what questions you
24 want to ask someone about land use?

25 MR. SIMPSON: Hmm.

1 HEARING OFFICER RENAUD: Not the specific
2 questions but the topic.

3 MR. SIMPSON: Well, I believe that a facility of
4 this nature would violate the nuisance ordinance. The
5 emissions of ammonia into the community, that type of thing,
6 would inherently be a public nuisance and violate those
7 sorts of codes. So I would like to understand if that's
8 correct, and if not why that's not correct.

9 HEARING OFFICER RENAUD: Okay, so you --

10 MR. SIMPSON: I believe the noise, light and
11 emissions from the facility will violate the land use laws.

12 HEARING OFFICER RENAUD: All right. So your scope
13 of cross examination --

14 MR. SIMPSON: I don't have the laws right in front
15 of me.

16 HEARING OFFICER RENAUD: I understand that. I
17 don't either. Your scope of cross-examination on land use
18 will be the potential violation of nuisance ordinances.

19 MR. BELL: If we could be heard?

20 HEARING OFFICER RENAUD: Yes, Mr. Bell.

21 MR. BELL: I would just like to have an objection
22 noted to this. Mr. Simpson hasn't identified what land use
23 laws he is referring to specifically or even generally
24 beyond what we have right now, his statement over the phone,
25 that it's the nuisance laws. Again, this shows a lack of

1 knowledge of what's the in the FSA, the PSA, in the
2 application itself and all the other documents that we have
3 before us.

4 We would object to having any witness available on
5 this subject because we still don't know what the scope of
6 this cross-examination is. We don't know what laws he's
7 objecting to. He's offered no evidence contrary to what's
8 been received so far or what will be received in evidence.
9 And again this appears to be nothing more than a time
10 wasting fishing expedition on Mr. Simpson's part.

11 HEARING OFFICER RENAUD: Mr. Simpson, would you
12 care to respond?

13 MR. SIMPSON: Sure, sure. My hope is that the
14 Commission's hoping for a robust proceeding. With myself
15 being the one intervenor, without me there you'll have the
16 Commission and the applicant just agreeing on what they have
17 put in so far, no discussion and you go home. With at least
18 one intervenor, whether -- whether the artfulness of my
19 expression is sufficient for the level that you'd like it to
20 be at this point, I can't help very much.

21 But most ordinances, most areas have a nuisance
22 ordinance, nuisance ordinances. I don't know the exact
23 nature of the nuisance ordinance in that location today.
24 But by the time we have our hearing I should be able to
25 point out the nuisance ordinance. I should be able to say,

1 okay, here's an ordinance that says you can't emit foul
2 odors into the air, that you can't make this much noise
3 here.

4 HEARING OFFICER RENAUD: Well have you looked at
5 those ordinances to see which ones you would like to ask
6 questions about? Because they are all listed in the AFC and
7 the FSA. That's the testimony.

8 MR. SIMPSON: I could look through the AFC and
9 the --

10 HEARING OFFICER RENAUD: I think you should have
11 done that long ago.

12 MR. SIMPSON: You want me to go through it now?

13 HEARING OFFICER RENAUD: You should have done that
14 long ago, you know.

15 MR. SIMPSON: Thank you.

16 HEARING OFFICER RENAUD: The FSA has been out for
17 over a month. The AFC was filed last year. And the list of
18 the applicable laws have been in those documents. So for
19 you to tell us now that you might want to go look at the
20 laws strikes me as not being prepared and not having taken
21 an interest in this until basically last Friday.

22 MR. SIMPSON: And I'm the only guy here that's not
23 getting paid for this. So if I can't commit the sort of
24 resources that the Energy Commission can or the applicant
25 can, I think that's understandable.

1 HEARING OFFICER RENAUD: Okay, I'm going to offer
2 you --

3 PRESIDING MEMBER PETERMAN: Mr. Simpson, I'm just
4 going to note that --

5 MR. SIMPSON: I've demonstrated a fair commitment
6 to this proceeding.

7 PRESIDING MEMBER PETERMAN: Mr. Simpson, this is
8 Commissioner Peterman. And again, we are trying to
9 facilitate participation. But you have been an intervenor
10 in this proceeding since the beginning, I believe, or nearly
11 the beginning. So just being aware of, as Mr. Renaud has
12 pointed out, the timing when many of these documents have
13 been released over the last year.

14 HEARING OFFICER RENAUD: All right. Mr. Simpson,
15 what we have understood from you about land use is you want
16 to cross-examine about potential violations of nuisance, the
17 nuisance laws. And I think that's what we'll limit it to.

18 Let's move on to noise and vibration. I think
19 since there is already controversy concerning that area
20 chances are that witnesses will be available. But you
21 haven't really, again, articulated what your scope would be.

22 You simply said it would be, it's a significant impact.
23 And I think it's potentially kind of blends in with your
24 nuisance questions really. Can you give us just a sense of
25 what your questions --

1 MR. SIMPSON: I'm sorry, what's your comment?

2 HEARING OFFICER RENAUD: What your area of
3 questioning would be with respect to noise?

4 MR. SIMPSON: Well, until a few days ago I was
5 unaware that there would be a facility built next to this
6 project. I'd like to, I'd like to look at the noise impacts
7 to the affected community.

8 HEARING OFFICER RENAUD: Let me, let me point out
9 to you --

10 MR. SIMPSON: I (audio breaking up) impact. I'm
11 sorry, did I interrupt you?

12 HEARING OFFICER RENAUD: You know, the owner of
13 that potential facility is in this proceeding as an
14 intervenor and is represented by counsel so I think you can
15 feel, you know, assured that those interests will be
16 addressed by that party. I'm not sure you need to do it
17 too. Mister --

18 MR. SIMPSON: I appreciate your advice.

19 HEARING OFFICER RENAUD: All right. Mr. McKinsey,
20 I see you at the podium.

21 MR. McKINSEY: I have a general objection that is
22 similar to staff's but slightly different but it echoes
23 something you'd said, Hearing Officer Renaud and
24 Commissioner Peterman. And that is that a party has a duty,
25 it's part of the basis for intervention to not just become

1 an intervenor and show up but to prepare, to read documents;
2 and the Energy Commission regulations specify these things.

3 And today alone Mr. Simpson has made several
4 comments to indicate that he has not done that. In response
5 to your questions about nuisance he indicated, I'll go look
6 at those ordinances in the AFC, I'll read it. He just
7 stated, I'd like to look at the noise impacts on the
8 community. Those are statements of somebody who wants to
9 now go look at documents and find questions that he has a
10 basis. And the duty of a party, and it's a very important
11 duty, and there is a very broad scope of who can become a
12 party in an Energy Commission proceeding, but with that is
13 the caveat that you have responsibilities to prepare so that
14 you can meaningfully participate.

15 And Mr. Simpson's comments are very valid about
16 the role of an intervenor in making a proceeding more
17 robust. But having an intervenor that appears and has not
18 read documents and is not prepared to articulate the
19 specific issues that he or she has identified in a
20 proceeding doesn't make the proceeding more robust, it
21 distracts it from the important issues that the parties are
22 trying to debate.

23 As an example on noise. Even if Mr. Simpson would
24 connect to the noise issues that he's seen arise, it may be
25 that the parties will resolve those noise issues before the

1 hearing, which would mean that we wouldn't plan on having
2 any witnesses that day. But now if Mr. Simpson suddenly
3 joins that party he becomes somebody that would have to also
4 allow us to no longer have those witnesses appear.

5 So applicant objects, though tremendously
6 appreciates the patience and the interest that the Committee
7 is putting towards trying to have a robust proceeding. But
8 we'd echo the staff's comments that this appears to be a
9 fishing expedition where you're giving Mr. Simpson a
10 tremendously robust opportunity to try to articulate.

11 But if he can't articulate the specific issue that
12 he has identified in the Application for Certification, in
13 the Preliminary Staff Assessment. He filed no comments to
14 the Preliminary Staff Assessment, the Final Staff
15 Assessment. And all the other documents that he's read and
16 can't say, this is the issue I've got a concern with, then
17 all we are going to end up doing is scheduling somebody to
18 appear and see more of a fishing expedition.

19 And so we understand and we appreciate the effort
20 of the Committee here but we really don't think that he
21 should be allowed to make statements that say, I haven't
22 read this but I'll figure it out before they show up.

23 HEARING OFFICER RENAUD: Thank you. We appreciate
24 that and I think what you're saying is apt. On the other
25 hand, we do traditionally at the Energy Commission make

1 every effort possible to accommodate intervenors, primarily
2 for the reason of, you know, wanting there to be as many
3 viewpoints in the room as possible.

4 What we try to do, of course, is get it organized.

5 We can ask that people participate actively. And it
6 appears in this case that that didn't happen so we're trying
7 to make the best of it. Mr. Simpson has made at least an
8 attempt to file a prehearing conference statement and let us
9 know what he wants to cross-examine about and we are working
10 our way through that list. I think we're almost there so
11 let's just try and finish this.

12 MR. SIMPSON: I'm sorry, can I respond to the
13 objection?

14 HEARING OFFICER RENAUD: Yes.

15 MR. SIMPSON: I don't understand the objection,
16 can you restate the objection?

17 HEARING OFFICER RENAUD: No. There is no -- this
18 is not an evidentiary --

19 MR. SIMPSON: If you're going to make a ruling on
20 his objection it should be pretty clear what it is.

21 HEARING OFFICER RENAUD: Well that would be the
22 case if I was being asked to admit or deny the admission of
23 evidence and we are not in an evidentiary proceeding here.
24 Mr. McKinsey articulated a --

25 MR. SIMPSON: Objection.

1 HEARING OFFICER RENAUD: A position regarding the
2 duties of an intervenor and pointed out that, you know, from
3 what we are seeing here it doesn't sound like you have
4 really kind of kept up your end of the bargain. Nonetheless
5 we are trying to accommodate you.

6 MR. SIMPSON: Well he called it an objection. He
7 called it an objection and then made a speech. I don't know
8 what the objection is.

9 HEARING OFFICER RENAUD: Well, then --

10 MR. SIMPSON: (Overlapping) to understand that.

11 HEARING OFFICER RENAUD: Then you don't have to
12 say anything about it, all right. We're going to move on.

13 MR. SIMPSON: So are you going to rule on the
14 objection?

15 HEARING OFFICER RENAUD: I'm not viewing it --

16 PRESIDING MEMBER PETERMAN: We're going to move
17 on, Mr. Simpson.

18 HEARING OFFICER RENAUD: I am not viewing it as a
19 formal objection --

20 MR. SIMPSON: Thank you.

21 HEARING OFFICER RENAUD: -- in that sense. I'm
22 viewing it as really an expression of frustration and that
23 is one we are all feeling. And we are trying to accommodate
24 you, do you understand that? And we are going to proceed.
25 Okay.

1 Now, as Mr. McKinsey pointed out the parties are
2 holding a workshop on the morning of July 23rd to discuss
3 noise and vibration. Mr. Simpson, would you plan to
4 participate in that?

5 MR. SIMPSON: Sure.

6 HEARING OFFICER RENAUD: All right. I think if it
7 gets resolved during that and you've participated that would
8 be terrific. If it doesn't get resolved during that then I
9 think there could be some limited cross-examination on that
10 topic. Mr. McKinsey, yes.

11 MR. MCKINSEY: I apologize for interrupting again
12 but I would note that we are attempting to reach an
13 agreement with CCA. If we do we are going to docket our
14 proposed condition. And the workshop might still have some
15 function in terms of allowing staff but ultimately it would
16 be up for staff to testify to the Committee as to what their
17 position is on something that we have reached agreement on
18 or not have reached agreement on. But my point is there may
19 not be a workshop. And again, I wouldn't want to have a
20 workshop simply because Mr. Simpson has expressed an
21 interest in that topic.

22 HEARING OFFICER RENAUD: I see.

23 MR. MCKINSEY: Often I've seen where we've noticed
24 these things and then they don't happen, simply because
25 there wasn't a need for them in the end. Or at least the

1 parties, you know, the staff shows up but there really isn't
2 a functional thing because the other parties aren't there.

3 HEARING OFFICER RENAUD: Okay, well thanks for
4 that clarification. Clearly if staff and applicant and CCA
5 resolve their issue regarding noise no workshop regarding
6 that issue would be noticed. If Mr. Simpson, however, still
7 has concerns about noise, and I take it those probably
8 wouldn't go away even if there were an agreement, although
9 we can't say that for sure because we don't know what the
10 agreement might be, he might still have some questions
11 regarding that issue. Mr. McKinsey.

12 MR. MCKINSEY: We do have one issue and that is
13 that the applicant and the other parties are able to freely
14 communicate, the staff is operating under a constraint. I
15 don't think that I necessarily agree it's exactly how the ex
16 parte rules read but that they can't communicate with us on
17 matters of substance except at a noticed hearing. So
18 anything we do can't involve the staff so ultimately the
19 staff wouldn't be able to express agreement on it until they
20 hear about it. And that's why if we docket it at least the
21 staff could then docket comments back about it prior to the
22 hearing and that's a way to essentially allow the staff to
23 do that. But there really won't be the ability other than
24 at something like a workshop where it's publicly noticed for
25 the parties to say -- for staff to say their agreement.

1 HEARING OFFICER RENAUD: Okay, point well taken,
2 thank you. I think the --

3 Mr. Simpson let's just go back to what we have
4 been asking you about each of these topics and that is
5 you've said here that the noise levels are a significant
6 impact and is unmitigated and inconsistent with LORS. Can
7 you, can you give us a -- that's a very broad statement.
8 We'd like to find out exactly what specific area regarding
9 noise you want to ask questions about so that the parties
10 would have some idea of what witness, if any, to make
11 available for you?

12 MR. SIMPSON: Sure, give me a few minutes here and
13 I'll look up the laws if you like.

14 HEARING OFFICER RENAUD: No, no, we're not -- No,
15 no.

16 MR. SIMPSON: But it's largely with the other
17 intervenors. Well, it's what you're asking me. Well what
18 would you like to know?

19 HEARING OFFICER RENAUD: You were notified in the
20 notice of June 15th to have this information prepared and
21 filed by July 6th so you are not going to go now and look it
22 up. You've had, you've had a good three weeks.

23 MR. SIMPSON: Well you just asked me to.

24 HEARING OFFICER RENAUD: We asked you to on June
25 15th to identify the scope of your cross-examination.

1 MR. SIMPSON: Okay.

2 HEARING OFFICER RENAUD: I'm asking you to clarify
3 what you --

4 MR. SIMPSON: And my cross-examination will --

5 HEARING OFFICER RENAUD: Pardon me?

6 MR. SIMPSON: I would like to understand what
7 mitigation can be done for the noise impacts. What --
8 that's the primary concern. When -- I filed a prehearing
9 conference statement when the FSA was done, when all this
10 was done. There was no, there was no -- no one admitted
11 that there was a project that was approved next door. No
12 one considered the impacts to adjacent development. I think
13 the project should comply with the local LORS.

14 HEARING OFFICER RENAUD: Doesn't the fact that
15 the --

16 MR. SIMPSON: As far as noise impacts.

17 HEARING OFFICER RENAUD: Doesn't the fact that the
18 owner of that project is a party as an intervenor and is
19 protecting those interests satisfy your concern then?

20 MR. SIMPSON: I'm not sure it does, I hope so.
21 But I don't see an agreement between anybody at this point
22 for me to consider.

23 ADVISOR ALLEN: Mr. Simpson?

24 MR. SIMPSON: Yes.

25 ADVISOR ALLEN: I believe that the CCA's proposed

1 project is noted in the land use section of the FSA.

2 MR. SIMPSON: Oh, is it?

3 ADVISOR ALLEN: Perhaps Mr. Solorio can confirm
4 that.

5 MR. SOLORIO: Yes. We've discussed the CCA
6 project both in the PSA and the FSA, it's always been part
7 of our analysis.

8 ADVISOR ALLEN: Thank you.

9 MR. SIMPSON: Well, I'd like to be the first to
10 admit my ignorance. Thank you for pointing that out.

11 MS. FOSTER: Applicant would also like to note
12 that it is mentioned in the AFC in the noise section as
13 well.

14 HEARING OFFICER RENAUD: Okay. I think your
15 concerns regarding noise have been addressed and let's move
16 on to another topic then. You won't need any --

17 MR. BELL: Just for clarification for --

18 HEARING OFFICER RENAUD: You won't need any cross-
19 examination on noise.

20 MR. BELL: We will not? Okay.

21 HEARING OFFICER RENAUD: No, Mr. Simpson won't.
22 All right.

23 MR. SIMPSON: I didn't say that.

24 HEARING OFFICER RENAUD: Well I'm saying that,
25 okay.

1 MR. SIMPSON: I heard that.

2 HEARING OFFICER RENAUD: You've had more than
3 ample opportunity to prepare that. And the party
4 representing the facility you've expressed a concern about
5 is, in fact, a party represented by counsel and is looking
6 after those interests.

7 MR. SIMPSON: And is he representing the inmates
8 or the workers?

9 HEARING OFFICER RENAUD: Would you like to answer
10 that, counsel?

11 MR. SCHRANER: Sure. We represent Corrections
12 Corporation of America.

13 HEARING OFFICER RENAUD: They represent
14 Corrections Corporation of America.

15 MR. SIMPSON: Okay, so that's necessarily the
16 inmates.

17 PRESIDING MEMBER PETERMAN: I'll also note that
18 the project has not been built yet so there are currently no
19 residents there.

20 MR. SIMPSON: Fair enough.

21 HEARING OFFICER RENAUD: All right. Okay, now
22 with respect to public health you stated that the impacts
23 cannot be assessed until the correct air quality monitoring
24 information is utilized. Again that sounds to me like that
25 would fit in with your air quality questioning, would I be

1 correct about that?

2 MR. SIMPSON: Well, I believe the public health
3 impacts are a factor of the air quality impacts. I believe
4 that ignoring the receptors that are near the project now,
5 whether they be on the US side of the border or in a prison,
6 have ignored public health impacts.

7 HEARING OFFICER RENAUD: Again, you're really
8 talking about air quality impacts so your cross-examination
9 in that area will be sufficient to cover the public health
10 topic as well. Okay, now under socioeconomics --

11 MR. SIMPSON: Well I'm not sure what other public
12 health impacts there would be besides air quality impacts.

13 HEARING OFFICER RENAUD: That's precisely what I
14 am saying to you.

15 MR. SIMPSON: I believe the primary public health
16 impact is the air quality impacts.

17 HEARING OFFICER RENAUD: That's what I'm saying,
18 all right. Now under socioeconomics --

19 MR. SIMPSON: I --

20 HEARING OFFICER RENAUD: Yeah.

21 MR. SIMPSON: I'm sorry, have you denied my --
22 have you denied cross-examination on public health or what
23 was your decision?

24 ASSOCIATE MEMBER DOUGLAS: We're asking you to
25 wrap up your air quality questions in air quality and to not

1 raise them again under public health since you have
2 expressed the interest to raise potential public health
3 impacts of air quality.

4 HEARING OFFICER RENAUD: Your concern according to
5 your document is the monitoring information and that is
6 addressed in air quality, so you can address it there.

7 MR. SIMPSON: Well the public health impacts are
8 addressed in my comments to the air district also. I'm not
9 sure why we would ignore them. Do we not even need a public
10 health section or other public health impacts?

11 PRESIDING MEMBER PETERMAN: Sir. Mr. Simpson, I
12 think the point is that when you cross-examine the air
13 district witness and you ask your air quality questions that
14 this question can be related to all those questions and so
15 you don't need -- applicant and staff do not need to provide
16 separate witnesses on public health per se outside of the
17 air quality area.

18 MR. SIMPSON: I see.

19 HEARING OFFICER RENAUD: Okay. Let's move on to
20 socioeconomics. Now your statement there is that it will
21 have a -- the project will have a negative impact by
22 preventing the development of renewable distributed
23 resources. And that really is an alternatives issue. We've
24 already -- and we're getting to alternatives. But I can't
25 see that you would need any separate cross-examination on

1 socioeconomics when your concern is over the prevention of
2 the development of renewable distributed resources. Do you
3 agree with that?

4 MR. SIMPSON: Well no, you left out the second
5 sentence. Plus the associated jobs and distribution of
6 wealth, socioeconomics.

7 HEARING OFFICER RENAUD: Jobs and distribution of
8 wealth associated with the development of renewable
9 distributed resources, correct?

10 MR. SIMPSON: Well, the contention in the
11 socioeconomics testimony as I understand it is that this
12 will create jobs for the community building this, this
13 pollution unit. My contention is that it actually takes
14 jobs away from the community in other sectors. So I would
15 like to explore if there's been -- if it's just a one-sided
16 socioeconomic study or if they studied other possibilities?

17 MR. BELL: If I may be heard.

18 HEARING OFFICER RENAUD: Mr. Bell.

19 MR. BELL: Part of the issue, Mr. Simpson wants to
20 explore this. He hasn't provided us any evidence, any
21 testimony, anything to contravene what staff has written,
22 what the applicant has submitted. He wants to explore this
23 issue, he wants to conduct discovery through cross-
24 examination and it is simply not appropriate.

25 HEARING OFFICER RENAUD: That's correct, Mr. Bell.

1 And we are talking about cross-examination, which means you
2 ask people about what their testimony is. Again, you have
3 stated in your prehearing conference statement that your
4 concern in socioeconomics is preventing the development of
5 renewable resources plus the jobs and distribution of wealth
6 associated with the development of those resources. Again,
7 that's talking about an alternative form of power generation
8 and alternatives will cover that adequately so we are not
9 going to have any cross-examination on socioeconomics. All
10 right.

11 MR. SIMPSON: That's not the way I see it but I'm
12 sure that's your choice.

13 HEARING OFFICER RENAUD: Thank you. Soil and
14 water resources. You state: "The project would waste water
15 resources." Again that doesn't really give us an idea of
16 any scope of cross examination. What specific areas do you
17 want to ask questions about?

18 MR. SIMPSON: The impacts on water resources.
19 It's not the soil issues. I think the soil issues are
20 covered in biological resources. Water resources don't be
21 -- don't need to be used for this project.

22 As these -- as these different sections are done
23 and they compartmentalize this as if it's not all related to
24 alternatives. I know you'd like to group things into
25 alternatives. But the reality is that if the soil and water

1 resources section doesn't consider alternatives, if
2 socioeconomics doesn't consider alternatives, then you've
3 got a disjointed process that the pieces may look right but
4 without consideration of the whole.

5 HEARING OFFICER RENAUD: Let's limit the
6 discussion to your prehearing conference statement. We're
7 trying to find out what areas you would like to cross-
8 examine on in the area of water resources. What we're
9 really asking is, you know, what that means is, what
10 disagreement do you have with any of the testimony that has
11 been submitted regarding water resources?

12 MR. SIMPSON: I believe that it is unnecessary to
13 use water resources for this project and I would like to
14 understand from the testimony that's provided what can be
15 done to minimize those impacts.

16 HEARING OFFICER RENAUD: The testimony has been
17 provided. And we expect that by now you know what you
18 disagree with in it and we're asking you to tell us.

19 MR. SIMPSON: You're going to reject my, my cross-
20 examination of soil and water resources anyway so why, why
21 are we having the discussion first?

22 HEARING OFFICER RENAUD: That's precisely why
23 we're having the discussion, so we can decide whether or not
24 it makes sense for you to cross-examine. And nobody said
25 we're rejecting that yet. We're waiting for you to tell us

1 what it is in somebody else's testimony about water
2 resources that you disagree with. And I am not hearing
3 anything, which makes me wonder if you're familiar with the
4 testimony of the other witnesses regarding water resources.

5 Have you read it?

6 MR. SIMPSON: I could certainly be more familiar.

7 HEARING OFFICER RENAUD: Well, I guess I'm asking
8 whether or not you've read it. If you are not familiar with
9 it at this point I think it's appropriate to say you are not
10 going to be prepared to cross-examine and you were asked to
11 be prepared as of July 6th. So I am going to have to say
12 that no, there will be no cross-examination on water
13 resources.

14 MR. SIMPSON: (Overlapping). See.

15 HEARING OFFICER RENAUD: All right. Now on visual
16 resources.

17 MR. SIMPSON: -- I said.

18 HEARING OFFICER RENAUD: What?

19 MR. SIMPSON: Well that's what I said, you were
20 going to reject it anyway so why, why have the conversation
21 first?

22 PRESIDING MEMBER PETERMAN: Mr. Simpson, we are
23 giving you, short of rejecting outright because there was
24 not sufficient scope provided in your prehearing conference
25 statement, we are giving you the opportunity here and now to

1 clarify that scope. To the extent that you are not able to
2 then yes, we will make the decision to not allow you to
3 cross-examine. But allowing you the opportunity, as you
4 have been provided on some of these other items, and we have
5 allowed now for you to cross-examine, we are providing you
6 the opportunity on this one as well. But since you did not
7 provide additional information in this area I am
8 recommending that you do not cross-examine in this area.
9 This is Commissioner Peterman, by the way.

10 MR. SIMPSON: Thank you.

11 HEARING OFFICER RENAUD: All right. Now on visual
12 resources you have stated: "The project's visual negative
13 impact is significant and inadequately mitigated." What is
14 it about the testimony in visual resources with which you
15 disagree and wish to cross examine?

16 MR. SIMPSON: The visual impact of the plume, the
17 visual plume. The visual impact of the facility itself,
18 landscaping.

19 HEARING OFFICER RENAUD: What about the
20 landscaping do you disagree with?

21 MR. SIMPSON: Well, I look at the facility next to
22 it, I look at the Calpine facility that's gone through the
23 same process, and there is no landscaping whatsoever. And I
24 look at other projects that have been approved and it called
25 for landscaping but there's no, there's no actual

1 enforcement of any landscaping provisions.

2 HEARING OFFICER RENAUD: Is there any
3 landscaping --

4 MR. SIMPSON: (Audio breaking up).

5 HEARING OFFICER RENAUD: Let's talk about this
6 project though.

7 MR. SIMPSON: I'm sorry, did that (audio breaking
8 up).

9 HEARING OFFICER RENAUD: Is there any, is there
10 any testimony regarding landscaping that you disagree with?

11 MR. SIMPSON: I believe that projects have come
12 and gone with landscaping conditions that have not been
13 enforced and I don't think that we need to sit by and let
14 another one come and go without landscaping provisions that
15 will at least partially mitigate the impacts of these, these
16 monstrosities.

17 HEARING OFFICER RENAUD: Well, you know, I've
18 asked you the same question twice and I've asked you to be
19 specific about what it is you disagree with and the
20 testimony about land use and you haven't even begun to
21 provide an answer to anybody about that. And let me point
22 out, you know, the other parties did.

23 MR. SIMPSON: Wait, are you talking about land use
24 or landscaping?

25 HEARING OFFICER RENAUD: I'm sorry, visual

1 resources and landscaping. And the other parties did.

2 MR. SIMPSON: Well you said land use.

3 HEARING OFFICER RENAUD: Pardon me? We're talking
4 about visual resources here.

5 MR. SIMPSON: Well I'm sure -- okay, thank you.

6 HEARING OFFICER RENAUD: The other parties have
7 provided information regarding what they agree with and what
8 they disagree with and we're asking you to just do the same.

9 If there is testimony about landscaping in the visual
10 resources section that you disagree with you need to have
11 told us on July 6th but we're giving you a chance to tell us
12 now.

13 MR. SIMPSON: Okay. And that's what I was doing
14 until you started talking again.

15 HEARING OFFICER RENAUD: I haven't heard anything
16 specific about this project. I've heard your concern about
17 other projects in the past but you haven't --

18 MR. SIMPSON: Well --

19 HEARING OFFICER RENAUD: We're talking about this
20 project.

21 MR. SIMPSON: Well, it's the same scenario. That
22 you may make landscaping conditions, but if they are not
23 enforced or enforceable then there's no, there's no benefit.
24 When this facility closes, for instance. There is no,
25 there is no provision for this facility to be dismantled

1 when it closes. That's it. (audio breaking up) facility is
2 another significant visual impact. Our state is littered
3 with energy facilities that are decommissioned but not
4 deconstructed. So this project should have conditions that
5 require that it be dismantled when it's decommissioned.

6 PRESIDING MEMBER PETERMAN: Mr. Simpson, it seems
7 like you have some concerns about visual impacts from past
8 projects and there is a formal process, a complaint process.
9 I'm kind of looking to staff, maybe they have some more
10 information exactly on this. But it's part of the
11 compliance period to make sure that conditions of
12 certification, the applicant is in compliance with those.
13 And that's an important part of this process, maybe even
14 more so than actually even, you know, the siting of the
15 facility. And so I take those concerns seriously. However,
16 I do not think that past experience is enough of a scope
17 here in terms of an actual question related to this project
18 and we are concerned with this project.

19 HEARING OFFICER RENAUD: Mr. Simpson, is there a
20 condition of certification in the FSA regarding landscaping
21 for this project? Have you seen one?

22 MR. SIMPSON: Hold on just a minute. I'll look up
23 the conditions of certification on the landscaping.

24 HEARING OFFICER RENAUD: Mr. Simpson, no, we don't
25 want you to look it up now, we expected you to have done

1 that.

2 MR. SIMPSON: Well you told me then, is there a
3 condition or not? Why are you asking me? Do you know?

4 HEARING OFFICER RENAUD: Yes, I do, and there is.

5 MR. SIMPSON: Okay, well tell me it.

6 HEARING OFFICER RENAUD: No. We wanted you, we
7 need you to tell us the scope of your cross-examination and
8 so you told us landscaping, that there isn't any landscaping
9 provision, and that's not correct. And it just tells me
10 again that you haven't done anything to familiarize yourself
11 with the other parties' testimony so you could tell us about
12 the scope of your cross-examination.

13 MR. SIMPSON: Well I've been to the site. I
14 looked at the project next door. I've seen plenty of these
15 projects and I don't see any landscaping on them.

16 HEARING OFFICER RENAUD: All right, we're going to
17 deny your request for cross-examination on visual resources.
18 I don't think you have paid any attention to the testimony
19 that's been submitted.

20 MR. SIMPSON: Well sure you are.

21 HEARING OFFICER RENAUD: And now on worker safety
22 and fire protection you state: "Pipeline safety has not been
23 established." What testimony don't you agree with regarding
24 pipeline safety?

25 MR. SIMPSON: You're going to -- you're going to

1 do the same thing with this area so why don't we just --

2 HEARING OFFICER RENAUD: You could answer my
3 question, Mr. Simpson. If you have a disagreement with some
4 testimony then that would be appropriate.

5 MR. SIMPSON: Sure. A pipeline blew up a whole
6 neighborhood in San Bruno, killed a bunch of people and
7 nobody is doing anything about it.

8 HEARING OFFICER RENAUD: Is there testimony --

9 MR. SIMPSON: The Energy Commission acts like it's
10 not their job, the Utility Commission acts like its not
11 their job, and nobody studies pipeline safety. Nobody where
12 these pipelines even are or what they're made of anymore.

13 HEARING OFFICER RENAUD: Is there testimony --

14 MR. SIMPSON: Do you want to keep adding load to
15 these things?

16 HEARING OFFICER RENAUD: Has testimony been
17 submitted in this project regarding pipeline safety?

18 (No response).

19 HEARING OFFICER RENAUD: You don't know.

20 MR. SIMPSON: I didn't see it.

21 HEARING OFFICER RENAUD: Well, have you looked?

22 MR. SIMPSON: I just told you I didn't see it.

23 HEARING OFFICER RENAUD: I don't think you've
24 looked, if I may venture a speculation. It is in there,
25 Mr. Simpson.

1 MR. SIMPSON: Well good.

2 HEARING OFFICER RENAUD: All right. So your --

3 MR. SIMPSON: Pipeline safety cross-examination
4 won't be allowed, right?

5 HEARING OFFICER RENAUD: Your statement is
6 "Pipeline safety has not been established." I'm not sure
7 what to make of that regarding scope of cross-examination.
8 There is evidence about it. There's testimony been offered
9 on that. What is it in that testimony that you want to
10 cross-examine about?

11 MR. SIMPSON: Well, I'd like to refer to the
12 testimony but you don't want me to do that either.

13 HEARING OFFICER RENAUD: I expected you to have
14 done that in preparing your statement.

15 MR. SIMPSON: Really? You ask me in Question 6 to
16 identify the topics I wish to cross-examine the witness.
17 I've identified the topics.

18 HEARING OFFICER RENAUD: And a summary of the
19 scope.

20 MR. SIMPSON: You rejected the topics --

21 HEARING OFFICER RENAUD: And a summary of the
22 scope.

23 MR. SIMPSON: That's a summary of the scope.

24 HEARING OFFICER RENAUD: No, that's not a summary
25 of the scope.

1 MR. SIMPSON: My concern is pipeline safety,
2 that's the scope of my concerns. I mean, how many people
3 need to die from faulty pipelines in California before
4 somebody does an adequate study before they impact the
5 pipelines.

6 HEARING OFFICER RENAUD: Well, we're looking for
7 the scope of your cross-examination in that area. And
8 telling us "pipeline safety" is not scope, that is a topic.

9 MR. SIMPSON: Okay.

10 HEARING OFFICER RENAUD: All right, okay. There
11 won't be any cross-examination on the topic of pipeline
12 safety. Okay.

13 MR. SIMPSON: Of course not.

14 HEARING OFFICER RENAUD: You've listed
15 alternatives. You state: "The alternatives analysis fails
16 to adequately consider viable alternatives including the No
17 Project alternative, hybrid generation opportunities,
18 combined heat and power, et cetera."

19 First of all it appears you're calling Mr. Powers
20 as a witness regarding that topic. Is there testimony from
21 other parties that you wish to cross-examine on and if so
22 which testimony and what particulars about it?

23 MR. SIMPSON: I don't think Mr. Powers is on the
24 line anymore but I think his testimony was pretty extensive.
25 And if the applicant or the Commission wish to -- I'm

1 sorry, did I interrupt you?

2 HEARING OFFICER RENAUD: No, go ahead.

3 MR. SIMPSON: Okay, thanks. The alternatives.
4 You know, when these alternatives look at an all or nothing
5 project without, without looking at the opportunities like
6 Palmdale had to do some sort of a hybrid facility or the
7 guidance of the Attorney General on greenhouse gas impacts
8 pursuant to CEQA and just ignore the opportunity to do at
9 least some clean energy with these projects, this all or
10 nothing approach doesn't look at the, the true possibility
11 of alternatives.

12 HEARING OFFICER RENAUD: I appreciate that's your
13 position, that's fine. But we are trying to get a sense of
14 what it is that you wish to cross-examine about so that the
15 other parties will have some idea of what you need. Can
16 you, can you be specific about your cross-examination?

17 MR. SIMPSON: Well did you read Mr. Powers' -- did
18 you read Mr. Powers' testimony?

19 HEARING OFFICER RENAUD: No, you filed it on
20 Friday afternoon so no, I haven't read it. I'm familiar
21 with it in general.

22 MR. SIMPSON: So you didn't read it?

23 HEARING OFFICER RENAUD: But that's your direct --
24 I mean, that's your rebuttal testimony, that's testimony
25 you're providing. We're talking about cross-examination,

1 which means your questions of other witnesses, other
2 parties' witnesses. Do you intend to ask any other parties'
3 witnesses about alternatives or would you like to just use
4 Mr. Powers for your testimony?

5 MR. SIMPSON: We have quite a few alternative
6 cross-examination questions that Mr. Powers is preparing at
7 this time.

8 HEARING OFFICER RENAUD: Well we need to know the
9 scope so that we can be prepared for the evidentiary
10 hearing.

11 MR. SIMPSON: Well, I think the scope is
12 encompassed in Mr. Powers' testimony. What more would you
13 like to know? I mean, if you haven't read the testimony
14 then I'm in the same position that --

15 PRESIDING MEMBER PETERMAN: I wouldn't quite call
16 it the same position, sir. So since you provided the
17 testimony do you want to provide -- if you can provide any
18 more specifics about exactly what the cross-examination
19 questions area scope will be that will be appreciated.

20 MR. SIMPSON: Thank you. And the lack of any, any
21 renewable component to the facility is a concern for me and
22 I would like to examine why, oh shall I say, nuanced
23 alternatives, haven't been considered. You know, the
24 alternatives analysis is pretty stark as far as what I read,
25 and I did read some of it. That it's the same all or

1 nothing approach. That there's not the, the consideration
2 of, of some component of renewable resources with the
3 project. Which is what the EPA considered BACT for
4 Palmdale, it's what the Attorney General considers BACT for
5 GHG. Or not BACT, I guess they don't call it for CEQA
6 analysis. But these, the concept of these projects going up
7 with no, with not even a small renewable component just
8 flies in the face of the Attorney General's advice and
9 recent PSD permit determinations.

10 HEARING OFFICER RENAUD: Okay, thank you.
11 Mr. Bell has his hand here.

12 MR. BELL: Yes, I have an idea that may resolve
13 this. The testimony is already out there on behalf of
14 staff, on behalf of the applicant with respect to
15 alternatives. It's been published for some time now and yet
16 we still don't have any specifics as to the scope of what
17 Mr. Simpson would like to cross-examine any of the witnesses
18 with respect to alternatives. However, Mr. Simpson, it does
19 appear that he will be at the very least attempting to
20 provide rebuttal evidence with respect to the alternatives.

21 There is a possibility that staff or possibly the
22 applicant may call a surrebuttal witness to rebut, you know,
23 the assertions made by Mr. Powers. In that case that
24 surrebuttal witness would be, of course, subject to cross-
25 examination by any of the parties.

1 I would suggest that based on Mr. Simpson's
2 inability to articulate any scope of his cross-examination
3 besides he doesn't like, you know, the way we've handled
4 alternatives in some way that he can't really tell us, that
5 Mr. Simpson be allowed cross-examination only if a
6 surrebuttal witness is called by staff, by the applicant or
7 by another party. That would give him the opportunity to
8 cross-examine.

9 MR. SIMPSON: I would object to that.

10 HEARING OFFICER RENAUD: Thank you, Mr. Bell.

11 MR. SIMPSON: I would object to that.

12 HEARING OFFICER RENAUD: All right, thank you,
13 Mr. Simpson. He objects to that. Mr. Solorio is the author
14 of the staff's alternative section. I suspect you will be
15 at the evidentiary hearing, correct, Mr. Solorio?

16 MR. SOLORIO: Yes, I'll be there. And I haven't
17 heard anything from Mr. Simpson about what he disagrees with
18 with my analysis. I do read in his statement that he is
19 proposing a broader scope but he hasn't stated that he
20 disagrees with anything in it.

21 HEARING OFFICER RENAUD: All right. Mr. Simpson,
22 since Mr. Solorio is going to be present I think we'll allow
23 you a limited period of time for cross examination of him
24 regarding the staff's alternatives analysis. But as I said
25 earlier, we're going to expect you to be prepared, to be

1 familiar with the testimony and to be able to cross-examine
2 concerning areas of disagreement. Fair?

3 MR. SIMPSON: Yeah. It's 3:00 a.m. where I am so
4 excuse me if I'm not as articulate as I was when we started
5 this meeting.

6 PRESIDING MEMBER PETERMAN: I'm trying to figure
7 out where you are, sir, where it's 3:00 a.m. But
8 nonetheless, have we gone through all the sections?

9 HEARING OFFICER RENAUD: Yes.

10 PRESIDING MEMBER PETERMAN: Okay. So,
11 Mr. Simpson, we have gone through all the sections and
12 determined where you have an opportunity to cross-examine
13 and what the scope will be. This is Commissioner Peterman
14 so allow me to say a brief word as we move on.

15 We started this discussion with you, I started
16 this discussion with you open to allowing cross examination
17 in almost every area, even though I do not feel that you
18 provided sufficient scope in your prehearing conference
19 statement. But we wanted to take the time to walk through
20 each of these to make sure that if there were questions that
21 were appropriate for cross-examination that we allow the
22 opportunity for that to be the case. So in those areas
23 where we are not allowing cross-examination it is because
24 you have not provided enough information at all to define
25 that scope.

1 In a number of your comments today you have, I
2 think, suggested that you may be the only one looking out in
3 the public's interest. And I just want to get on the record
4 that that is not the case. The whole purpose of this
5 proceeding, of the Energy Commission's CEQA analysis, is to
6 mitigate against harmful impacts to the public. As the
7 public member of the Commission I am even more, I think,
8 sensitive to this topic. And as we proceed and have read
9 through the AFC and the FSA I am considering the public
10 consciously and always in my decision-making.

11 And the Committee will do so when we make our
12 final decision and when we make a decision after the
13 evidentiary hearing. So we are considering the evidence, we
14 are looking out for the public. I hope that staff is also
15 doing the same and that applicant and the intervenors as
16 well are being considerate of the public.

17 And so please rest assured that we are considering
18 these issues. That you cross-examining everyone will not
19 necessarily provide additional information that we are not
20 considering now. And so I just wanted to get that on the
21 record and we will see you at the evidentiary hearing.

22 MR. SIMPSON: I appreciate that and I believe that
23 you do try to be fair. I do feel like I was under attack
24 most of this conference. And I do understand that I don't
25 have the level of expertise that others have in this

1 proceeding but I am also the only member of the public
2 that's here that knows enough about this facility to even
3 participate.

4 I feel as though public notices haven't, haven't
5 indicated to people that there's an air quality impact. The
6 public notices haven't indicated what sort of permits you're
7 actually issuing. So if you want public participation in
8 this thing you should probably tell them that you're issuing
9 an air pollution permit.

10 PRESIDING MEMBER PETERMAN: I think we've --

11 MR. SIMPSON: You should probably tell them
12 that --

13 PRESIDING MEMBER PETERMAN: I think we've covered
14 the ground that that's not exactly what happens. And I will
15 say you have been represented by a lawyer during the entire
16 time of your intervening.

17 And I am also going to say that if applicant or
18 staff had come in as unprepared as you were today we would
19 not have provided as much leeway.

20 MR. SIMPSON: Thank you.

21 PRESIDING MEMBER PETERMAN: So I think we're ready
22 to move on, Hearing Officer.

23 HEARING OFFICER RENAUD: Yes, okay.

24 The next area for discussion today is a briefing
25 schedule. So far what I've heard that sounds like it might

1 be appropriate for briefing is the, is the noise issue, and
2 specifically what is the applicable law governing noise from
3 the facility.

4 I am reluctant to ask you folks to prepare briefs,
5 though, if you are going to be discussing and potentially
6 resolving this. I think that could be a waste of time so I
7 think we'll leave that up in the air for now. If we get to
8 the evidentiary hearing and it's still a question at that
9 time we'll probably request briefs in addition to, of
10 course, the evidence.

11 Anybody else have anything else they would like to
12 suggest briefing on? No? All right.

13 MR. SIMPSON: Well.

14 HEARING OFFICER RENAUD: Mr. Simpson, yes?

15 MR. SIMPSON: Are you asking if I'm agreeing to
16 limiting briefing to the noise?

17 HEARING OFFICER RENAUD: I'm asking if you have --

18 MR. SIMPSON: Or are you saying that we are going
19 to do the briefing after the -- after the hearing?

20 HEARING OFFICER RENAUD: Do you have any other
21 topics you'd like to submit a legal brief on?

22 MR. SIMPSON: Well sure. The areas that we intend
23 to testify and cross-examine about we would hope to brief
24 on.

25 MR. BELL: Just tell Mr. Simpson that we're

1 talking about prehearing briefs.

2 HEARING OFFICER RENAUD: All right. We'll address
3 more specifically the question of briefing after we have
4 done the evidentiary hearing. At the end of the evidentiary
5 hearing we'll decide amongst ourselves, amongst all the
6 parties and the Committee, what areas seem appropriate for
7 briefing.

8 Remember that briefs are really an assist to the
9 Committee in rendering the decision. And if the Committee
10 should determine that it has all the information it needs
11 for briefing we might not request briefing. That would not
12 preclude someone from submitting one but the Committee
13 wouldn't necessarily request briefs. Okay.

14 But we are not at this time requesting any briefs
15 in advance of the evidentiary hearing. All right.

16 I think that covers the business of the prehearing
17 conference. Next is public comment. But before we get to
18 that Ms. Allen has a question.

19 ADVISOR ALLEN: This is a question for Mr. Bell.
20 Mr. Bell, I think I heard you state that staff was prepared
21 to have a traffic witness available for questioning?

22 MR. BELL: That's correct.

23 ADVISOR ALLEN: Okay.

24 MR. BELL: That's our plan.

25 ADVISOR ALLEN: Okay. I will have a few brief

1 questions for staff about their cumulative impacts analysis
2 for traffic.

3 MR. BELL: Thank you. They'll be prepared to
4 answer them.

5 ADVISOR ALLEN: Thank you.

6 MS. FOSTER: Can applicant make one request?

7 HEARING OFFICER RENAUD: Yes, Ms. Foster.

8 MS. FOSTER: Applicant requests that the topic of
9 noise and vibration be placed early on the evidentiary
10 hearing schedule if possible.

11 HEARING OFFICER RENAUD: All right. Now remember,
12 I think we scheduled this to start at 2:30. So that's not
13 early in the day but we can certainly put that early in the
14 proceeding if that would be helpful.

15 MS. FOSTER: That would be, thank you.

16 HEARING OFFICER RENAUD: All right. Any other
17 such requests that may come up due to the availability of
18 witnesses and so forth just email those to me and we'll try
19 and work the schedule out in that regard.

20 MR. BELL: One last scheduling matter.

21 HEARING OFFICER RENAUD: Mr. Bell.

22 MR. BELL: Since we weren't apprised ahead of time
23 of exactly what witnesses were going to be called by any of
24 the other parties -- I'm sorry, by Intervenor Simpson and
25 also our other intervenor, we do note that Mr. Simpson is

1 planning on calling possibly two witnesses and possibly
2 himself. Staff would like to reserve some time to cross-
3 examine those witnesses now that we have been made aware of
4 them. We would expect no more than 30 minutes per witness
5 but I think 30 minutes would be very generous. I think that
6 we can make our points in much less time than that.

7 HEARING OFFICER RENAUD: No question about that.

8 MS. FOSTER: Applicant has the same request as
9 well with regard to the witnesses identified by CCA in their
10 filing on Friday afternoon as well.

11 HEARING OFFICER RENAUD: Yes. And just again to
12 repeat, all parties should understand that cross-examination
13 means questions about what the witness said or testified to.
14 Limited to that.

15 All right, let's turn to public comment. Do we
16 have any persons in the room who wish to address the
17 Committee with a public comment?

18 (No response.)

19 No? All right. Is there anyone on the phone who
20 wishes to address the Committee with a public comment?

21 (No response.)

22 All right. The Committee will very shortly issue
23 a hearing order which will summarize the discussion today
24 and the agreements concerning the procedures to be followed
25 at the evidentiary hearing.

1 Are there any closing remarks by the members of
2 the Committee?

3 (No response.)

4 All right. Thank you everyone for your patience.

5 I look forward to a productive evidentiary hearing
6 on July 23rd. We're adjourned.

7 (The Prehearing Conference adjourned
8 at 11:58 a.m.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of July, 2012.

JOHN COTA

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

RAMONA COTA, CERT**478

July 14, 2012